



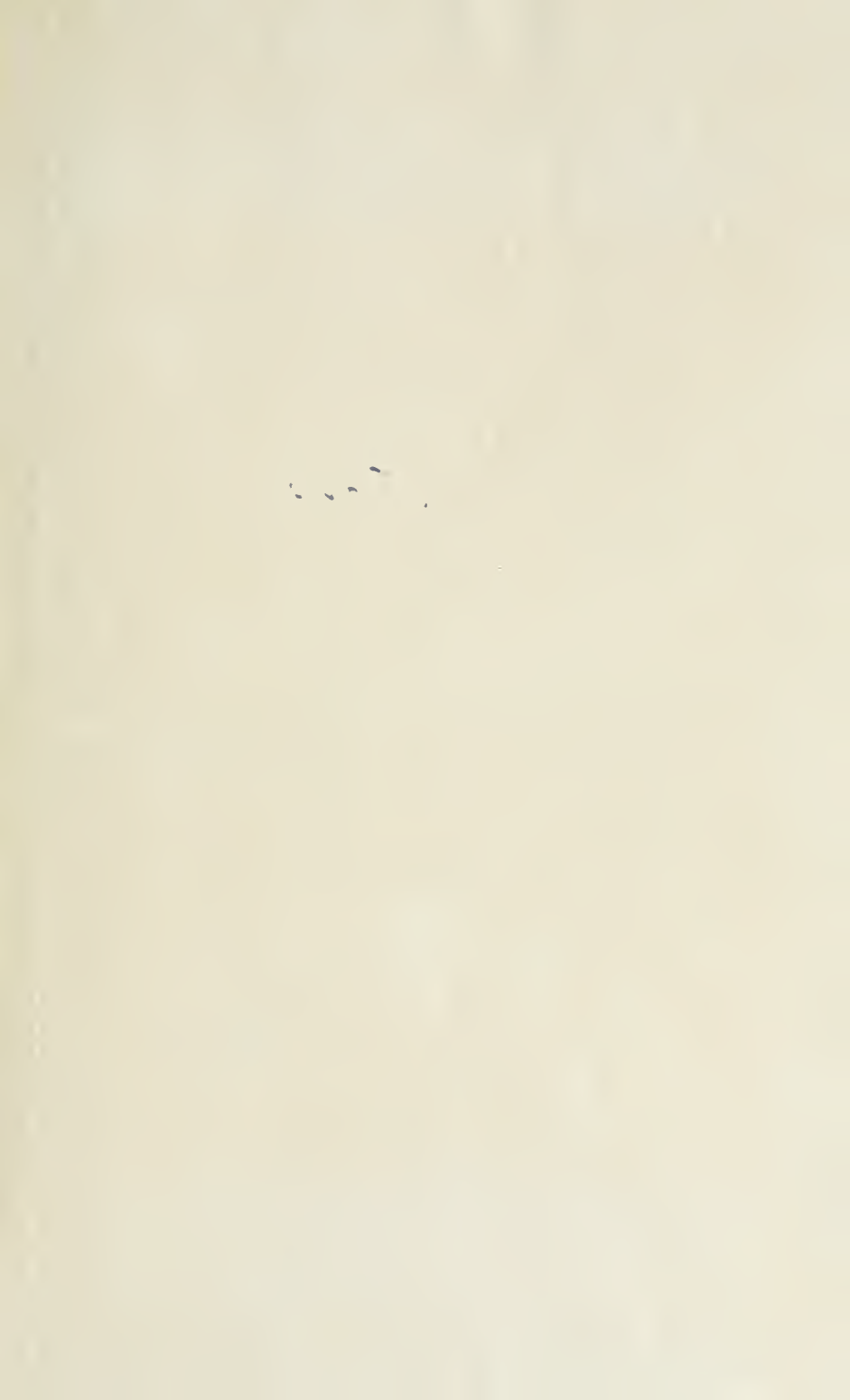
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No. 10360

United States *vol*
2333
Circuit Court of Appeals
For the Ninth Circuit. /

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA, hus-
band and wife,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Nevada

FILED

MAR 10 1943

No. 10360

United States
Circuit Court of Appeals
For the Ninth Circuit.

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA, hus-
band and wife,

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Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Nevada

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NAMES AND ADDRESSES OF ATTORNEYS
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For the Appellant:

Messrs. LONG & LEVIT,
Merchants Exchange Building,
San Francisco, California,

Messrs. HAWKINS, RHODES &
HAWKINS,

153 N. Virginia Street,
Reno Nevada;

For the Appellees:

WILLIAM S. BOYLE, ESQ.,
Gazette Building,
Reno, Nevada. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the District of Nevada

No. 199

SILVO QUESTA and JENNIE QUESTA,
husband and wife,

Plaintiffs,

vs.

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Defendant.

COMPLAINT

Plaintiffs complain of defendant and for cause
of action allege:

I.

That the defendant, Milwaukee Mechanics' Insurance Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin and licensed to do business within the State of Nevada.

II.

That the plaintiffs are citizens of the State of Nevada and the defendant is a citizen of the State of Wisconsin; that the amount in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

III.

That on August 1st, 1941 and for a long time

prior thereto and at all times mentioned in this complaint the plaintiffs, Silvo Questa and Jennie Questa were husband wife and ever since have been and now are husband and wife.

IV.

That on the 1st day of August, A. D. 1941, Silvo Questa for plaintiffs applied to Frank Hassett, Esq., who was then and there the duly authorized agent of the defendant, [2] for insurance in the sum of Seventy-five Hundred Dollars (\$7500.00) against loss or damage by fire upon a large barn situated on the Glendale Ranch in Washoe County, Nevada, the property of the said plaintiffs and the defendant, by their said agent, in consideration of the premises, which was to be the same rate as all other insurance held by plaintiffs with defendant to be paid defendant by plaintiffs, agreed to insure the plaintiffs on the said large barn on plaintiffs' Glendale Ranch from the 1st day of August, A. D. 1941 for a space of three years and to execute and deliver to plaintiffs within a reasonable and convenient time their policy of insurance therefore in the usual form of policy issued by them insuring said plaintiffs' barn for the sum of Seventy-five Hundred Dollars (\$7500.00) against loss and damage by fire.

V.

That thereafter, to wit, on about September 20, 1941 the said barn was totally destroyed by fire, whereby the plaintiffs sustained loss to the amount of Seventy-five Hundred Dollars (\$7500.00).

VI.

That the defendant neglected and refused and still refuses, to execute and deliver their said policy of insurance in writing to the plaintiffs in pursuance to said agreement.

VII.

That the plaintiffs have duly performed all of the conditions of said agreement and insurance on their part to be performed and on or about the 24th day of September, 1941, notified the defendant of said loss, and on the 8th day of January, A. D. 1942 duly furnished the defendant with proofs of loss.

VIII.

That although more than fifty (50) days have [3] elapsed since said proofs were furnished, no part of said loss has been paid, and the whole thereof remains due and payable to the plaintiffs, the defendant having rejected the said claim in writing.

IX.

That the usual form of policy issued by the defendant agrees, among other things, as follows:

“This company shall not be held to have waived any proviison or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the

loss herein required have been received by this company, including an award by appraisers when appraisal has been required.”

That in pursuance thereto defendant took a deposition of plaintiffs and reduced same to writing. That the said defendant waived the said sixty days time by their letter dated February 20, 1942 which denies the existence of any liability or insurance on their part express or implied on the barn aforesaid of plaintiffs.

Wherefore, plaintiffs pray judgment against the defendant.

1. That the defendant corporation deliver its policy of insurance to the plaintiffs in the sum of Seventy-five Hundred Dollars (\$7500.00) on that certain large barn which was situate on the Glendale Ranch of plaintiffs.

2. That the plaintiffs are entitled to the sum of Seventy-five Hundred Dollars (\$7500.00) provided for in said policy.

3. That the plaintiffs be given judgment for their costs.

4. That the plaintiffs be given judgment for all other proper relief in the premises to which they may be entitled. [4]

WILLIAM S. BOYLE

Attorney for Plaintiffs

204 Gazette Bldg.,

Reno, Washoe Co., Nevada.

(Duly Verified.)

[Endorsed]: Filed Feb. 27, 1942. [5]

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Now Comes defendant above named and answers the complaint of plaintiffs herein, as follows:

I.

Defendant denies each and every allegation contained in paragraph IV of the complaint, except that defendant admits that Frank Hassett was and is a duly authorized agent of defendant.

II.

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph V of the complaint, and therefore denies said allegations.

III.

Defendant admits the allegations of paragraph VI of the complaint, except that defendant denies that there was any neglect on its part or that its refusal to execute or deliver any policy of insurance to plaintiffs was contrary to said or any agreement. [7]

IV.

Defendant admits that on or about September 24, 1941, plaintiffs notified defendant that the barn referred to in the complaint was burned on or about September 20, 1941, and that on or about January 8, 1942, plaintiffs furnished defendant with a document entitled "Proof of Loss"; defendant denies

each and every other allegation contained in paragraph VII of the complaint.

V.

Defendant admits that it has paid nothing to plaintiffs and has rejected their claim in writing; defendant denies that the whole or any part of said or any loss or any amount whatever remains or is or at any time was due or payable to plaintiffs or either of them.

VI.

Defendant admits and alleges that on January 26, 1942, plaintiffs voluntarily submitted to an examination under oath by defendant, pursuant to the terms of a "Non-Waiver Agreement" dated January 26, 1942, a copy of which is attached hereto, marked Exhibit "A" and made a part hereof; and admits and alleges that on February 20, 1942, defendant wrote and sent a letter to plaintiffs' attorney, a copy of which is attached hereto, marked Exhibit "B" and made a part hereof; defendant alleges that the usual form of policy insuring against fire issued by defendant in the State of Nevada is as prescribed by the "Nevada Insurance Act" (article 15, section 117) which adopts a standard fire policy for use in the State of Nevada; defendant denies each and every allegation contained in paragraph IX of the complaint not hereinabove in this paragraph of the answer expressly admitted. [8]

Wherefore, defendant prays that plaintiffs take nothing by their complaint herein, and that de-

fendant be dismissed hence with its costs of suit herein incurred.

LONG & LEVIT
HAWKINS, RHODES &
HAWKINS

By BERT W. LEVIT

Service of the above and foregoing "Answer to Complaint" by copy, is hereby admitted this 7th day of April, 1942.

WILLIAM S. BOYLE
Attorney for Plaintiff

(Duly Verified.)

[Endorsed]: Filed April 7, 1942. [9]

EXHIBIT "A"

NON-WAIVER AGREEMENT

This Agreement entered into at Reno, Nevada, on this 26th day of January, 1942, by and between Silvo Questa and Jennie Questa (First parties) and Milwaukee Mechanics' Insurance Company (second party),

Witnesseth:

Whereas, first parties have served upon second party a document entitled Amended Proof of Loss, making claim on second party for loss by fire to a certain barn under an alleged agreement to insure the same, said fire being stated therein to have occurred on or about midnight September 21, 1941; and

Whereas, second party has not and does not admit the issuance of any insurance upon said barn or the making or entering into by it or on its behalf of any agreement to insure the same or to issue a policy of insurance upon the same; and

Whereas, it is to the mutual advantage of all parties hereto to permit second party to investigate all the facts and circumstances concerning the alleged agreement to insure, the alleged fire and claim, and to ascertain the value of the said barn and the loss and damage, if any, thereto, without delay;

Now Therefore It Is Hereby Agreed by and between the parties hereto as follows:

1. Second party shall be free (but not obligated) to investigate and make any inquiry it may see fit, and to take such steps as it may be advised, with respect to any of the matters aforesaid.

2. First parties agree to furnish to second party all information within their ability to furnish and to submit to examination under oath, with respect to the foregoing matters.

3. Anything done or to be done in connection with any of the matters aforesaid shall not constitute an admission of the existence of any agreement to insure the said property or of the existence of any insurance upon the said property, or of any liability whatever on the part of second party for the alleged loss or damage to said property; nor shall second party thereby be deemed or held to

have waived, invalidated, forfeited or modified any legal rights available to it should it be ultimately determined that insurance of said barn by second party in fact exists.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

(Signed) SILVO QUESTA

(Signed) JENNIE QUESTA

First Parties

MILWAUKEE MECHANICS'
INSURANCE COMPANY

(Signed) By BERT W. LEVIT

Second Party [11]

EXHIBIT "B"

Law Offices
Long & Levit
Merchants Exchange
San Francisco

Percy V. Long
Bert W. Levit
William H. Levit

February 20, 1942.

William S. Boyle, Esq.,
Attorney at Law,
Gazette Building,
Reno, Nevada.

Re: File #1552—Silvo Questa, Reno, Nevada;
Fire Loss.

Dear Mr. Boyle:

Please be advised that our client Milwaukee Mechanics' Insurance Company denies that it is under any liability whatever to your clients Silvo Questa and Jennie Questa, or to either of them, for loss by fire to their barn occurring on or about September 21, 1941. Said Insurance Company expressly denies the existence of any contract of insurance, written or oral, between it and your clients or either of them, at the time of said fire or at any other time.

Yours very truly,

(Signed) LONG & LEVIT.

BWL:MC [12]

[Title of District Court and Cause.]

MINUTES OF COURT

Tuesday, June 23, 1942

The trial of this case coming on regularly this day at Reno, Nevada, by request of counsel for the respective parties, and without a jury—the services of a jury having been waived—Wm. S. Boyle, Esq., appearing for and on behalf of the plaintiffs, and Messrs. Bert W. Levit and Bryce Rhodes for the defendant. Mrs. Marie D. McIntyre, official reporter, is called by counsel for the respective parties to report this trial on the usual terms. Both parties ready. S. Questa is duly sworn and testifies for the plaintiffs, during which a small photograph of a barn is offered in evidence, admitted and ordered marked Plffs'. Ex. No. "A"; also an enlargement of the small photo of barn is offered, admitted and ordered marked Plffs'. Ex. No. "A-1"; also a bundle of blue prints of barn is marked Plffs'. Ex. No. "B" for Identification; also an insurance policy is offered, admitted and ordered marked Plffs'. Ex. No. "C"; and also a cancelled check for \$75.00 is offered, admitted and ordered marked Plffs'. Ex. No. "D". Mrs. Jennie Questa is duly sworn and testifies for the plaintiffs. S. L. Williams is duly sworn and testifies for the plaintiffs, during which Mr. Boyle offers in evidence a 1 sheet "Specification for Barn", which is admitted and ordered marked Plffs'. Ex. No. "E"; and also offers in evidence Plffs'. [13] Ex. No.

“B” for Identification, which is admitted and ordered marked Plffs.’ Ex. No. “B”. Mr. Levit moves to strike the testimony of this witness and Plffs.’ Exhibits Nos. “B” and “E”, which will later be taken under consideration by the Court. Mr. Boyle offers in evidence letter, dated February 20, 1942 from Long & Levit to Wm. S. Boyle, which is admitted and ordered marked Plffs.’ Ex. No. “F”; and also offers “Proof of Loss” and “Amended Proof of Loss”, which are admitted and ordered marked Plffs.’ Ex. No. “G”. The plaintiffs rest. Mr. Levit offers in evidence a letter, dated Jan. 8, 1942 from W. S. Boyle to Frank Hassett, which is admitted and marked Deft’s. Ex. No. 1; also offers letter, dated Jan. 13, 1942 from Frank Hassett Inc. to Wm. S. Boyle, which is admitted and ordered marked Deft’s. Ex. No. 2; and also offers a “Non waiver Agreement”, which is admitted and ordered marked Deft’s. Ex. No. 3. Frank Hassett is duly sworn and testifies for the defendant, during which a “Covering Note”, dated Mar. 25, 1941 is offered in evidence, admitted and ordered marked Deft’s. Ex. No. 4. At 4:15 o’clock P. M. a recess is declared and the further trial herein continued to tomorrow morning at ten o’clock. [14]

[Title of District Court and Cause.]

MINUTES OF COURT

Wednesday, June 24, 1942

The further trial of this case coming on regularly this day, the same parties, counsel and official reporter being present. S. L. Williams takes the witness stand for further re-direct examination by Mr. Boyle. Miss Lena Porta is duly sworn and testifies for the defendant. Frank Hassett takes the witness stand for re-direct examination. James V. Corica is duly sworn and testifies for the defendant. Howard Parrish is duly sworn and testifies for the defendant. Mr. Levit offers in evidence original "Covering Note" which is admitted subject to objection, same is withdrawn and photostat copy is substituted and marked Deft's. Ex. No. 5. A copy of letter, dated July 3, 1941 from Mrs. Cupit to Mr. Questa is marked Plffs.' Ex. No. "H" for Identification. John F. Hickok is duly sworn and testifies for the defendant. S. Questa is recalled to the witness stand for further cross-examination by Mr. Levit, following which the defendant rests. Jennie Questa and S. Questa both testify in rebuttal for the plaintiffs. A copy of Plffs.' Ex. No. "H" for Identification, signed by both Mrs. Cupit and Silvio Questa, together with Plffs.' Ex. No. "H" for Identification, both fastened together, offered in evidence and marked Plffs.' Ex. No. "H". The plaintiffs rest. Howard Parrish testifies in sur-rebuttal. [15] The defendant rests. Both parties

rest. It Is Ordered that this trial be transcribed, each side to pay one-half of the costs therefor. It Is Ordered that this case be submitted on briefs, the plaintiffs being allowed 10 days after the filing of transcript to file opening brief, defendant 15 days thereafter to file answering brief, and plaintiffs 10 days thereafter to file reply brief. Counsel state they may desire oral argument. * * * [16]

[Title of District Court and Cause.]

MINUTES OF COURT

Saturday, September 26, 1942

This being the time heretofore fixed for hearing oral arguments on the merits, and the same coming on regularly this day, Wm. S. Boyle, Esq., appearing for and on behalf of the plaintiff, and Bert W. Levit, Esq., of counsel, for the defendant. Arguments by counsel for the respective parties. Counsel are permitted to and including October 5, 1942 to file additional briefs, following which this matter will stand submitted. [17]

[Title of District Court and Cause.]

MINUTES OF COURT

Thursday, October 29, 1942

This case having heretofore been tried, submitted on briefs and by the Court taken under advisement, It Is Ordered that plaintiffs' be, and they

hereby are, granted judgment against defendant in the sum of \$4000.00, together with costs of suit. It Is Further Ordered that the attorney for plaintiffs submit proposed findings of fact, conclusions of law and form of judgment and serve copy thereof upon attorneys for the defendant. The Court now files Memorandum Decision. [18]

[Title of District Court and Cause.]

MEMORANDUM DECISION.

This case having been submitted upon the transcript of testimony and briefs filed on behalf of the respective parties and the Court being fully advised in the premises, it is the conclusion of the Court that the evidence is sufficient to establish an oral contract of fire insurance upon Plaintiff's barn which later was destroyed by fire and that the amount of insurance at that time, covered by such oral contract, was a sum not less than Four Thousand (\$4000.00) Dollars, which amount the Court finds to be the amount so covered by such oral contract and that the damage sustained by Plaintiff, by reason of said fire, was not less than such amount, wherefore, it is

Ordered: That Plaintiffs be, and they hereby are, granted judgment against Defendant in the sum of Four Thousand (\$4000.00) Dollars, together with costs of suit.

It Is Further Ordered: That the attorney for Plaintiffs submit proposed findings of fact, conclu-

sions of law and form of judgment and serve copy thereof upon attorneys for Defendant.

Done in open Court this 29th day of October, 1942.

FRANK H. NORCROSS,
District Judge.

[Endorsed]: Filed Oct. 29, 1942. [19]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above-entitled cause having come on regularly to be heard before the above-entitled court on June 2, 1942 and June 24, 1942, the plaintiff appearing in person and by their attorney William S. Boyle, Esq. and the defendant corporation appearing by its attorneys Long and Levit by Bert W. Levit Esq. of San Francisco and Hawkins, Rhodes and Hawkins, by Bryce Rhodes, Esq. The plaintiffs offered evidence both oral and documentary in support of their complaint and the defendant corporation offered evidence both oral and documentary in support of its answer and both sides rested and the matter was submitted to the court after briefs had been filed and oral arguments presented to the court on September 26, 1942. The court having been fully advised on all phases of the matter by respective counsel and now, after due deliberation, the court finds the following facts:

I.

That the defendant, Milwaukee Mechanics' Insurance Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin and licensed to do business within the State of Nevada.

II.

That the plaintiffs are citizens of the State of [20] Nevada and the defendant is a citizen of the State of Wisconsin; that the amount in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars.

III.

That on August 1st, 1941 and for a long time prior thereto and at all times mentioned in this complaint the plaintiffs, Silvo Questa and Jennie Questa were husband and wife and ever since have been and now are husband and wife.

IV.

That on the 1st day of August, A. D. 1941, Silvo Questa for plaintiffs applied to Frank Hassett, Esq., who was then and there the duly authorized agent of the defendant, for insurance in the sum of four thousand dollars against loss or damage by fire upon a large barn situated on the Glendale Ranch in Washoe County, Nevada, the property of the said plaintiffs and the defendant, by their said agent, in consideration of the premises,

which was to be the same rate as all other insurance held by plaintiffs with defendant to be paid defendant by plaintiffs, agreed to insure the plaintiffs on the said large barn on plaintiffs' Glendale Ranch from the 1st day of August, A. D. 1941 for a space of three years and to execute and deliver to plaintiffs within a reasonable and convenient time their policy of insurance therefore in the usual form of policy issued by them insuring said plaintiffs' barn for the sum of four thousand dollars against loss and damage by fire.

V.

That thereafter, to-wit, on about September 20, 1941 the said barn was totally destroyed by fire, whereby the plaintiffs sustained loss to the amount of four thousand dollars. [21]

VI.

That the defendant neglected and refused and still refuses, to execute and deliver their said policy of insurance in writing to the plaintiffs in pursuance to said agreement.

VII.

That the plaintiffs have duly performed all of the conditions of said agreement and insurance on their part to be performed and on or about the 24th day of September, 1941, notified the defendant of said loss, and on the 8th day of January, A. D. 1942 duly furnished the defendant with proofs of loss.

From the Foregoing Facts the Court Legally Concludes:

That *at* an oral contract of fire insurance upon plaintiffs barn existed which was later destroyed by fire and that the amount of insurance at that time, covered by such oral contract was a sum not less than four thousand dollars which amount the court concludes to be the amount so covered by such oral contract and that the damage sustained by Plaintiff, by reason of said fire, was not less than such amount.

That the plaintiff is entitled to judgment against defendant Milwaukee Mechanics Insurance Company a corporation in the sum of four thousand dollars together with cost of suit.

Done in open court this the 23d day of November, A. D. 1942.

/S/ FRANK H. NORCROSS,
District Judge.

Service of a copy hereof admitted this 2nd day of Nov., 1942.

HAWKINS, RHODES &
HAWKINS,
By BRYCE RHODES.

[Endorsed]: Filed Nov. 23, 1942. [22]

In the District Court of the United States in and
for the District of Nevada

No. 199

SILVO QUESTA and JENNIE QUESTA, hus-
band and wife,

Plaintiffs,

vs.

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Defendant.

JUDGMENT

The above-entitled action coming on regularly to be heard before the above court on June 23, 1942 and June 24, 1942 William S. Boyle, Esq. appearing *plaintiffs* and Long and Levit and Hawkins, Rhodes and Hawkins attorneys at law appearing for defendant corporation, and evidence having been introduced by each of the respective parties, and the said cause having been submitted for decision, and the court being fully advised, having rendered its findings of fact and conclusions of law herein, wherein judgment is ordered in favor of plaintiff and against the defendant:

Now, therefore, by reason of the law and findings aforesaid:

It is ordered, adjudged, and decreed:

That an oral contract of fire insurance existed upon plaintiffs barn which was later destroyed by

fire and that the amount of insurance at that time, covered by such oral contract was a sum not less than four thousand dollars and that the damage sustained by plaintiff, by reason of said fire, was not less than such amount:

That the plaintiff have judgment against defendant Milwaukee Mechanics Insurance Co. a corporation in the sum of four thousand dollars with cost of court herein taxed at [23] \$115.30.

Done in open court this 23d day of November, A. D. 1942.

Costs allowed and taxed in sum of \$112.30.

/s/ FRANK H. NORCROSS,

District Judge.

O. E. BENHAM,

Clerk.

By O. F. PRATT,

Deputy.

Service of a copy hereof admitted this 2nd day of Nov. 1942.

HAWKINS, RHODES &

HAWKINS.

By BRYCE RHODES.

[Endorsed]: Filed Nov. 23, 1942. [24]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is Hereby Given that Milwaukee Mechanics' Insurance Company, a corporation, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on or about November 23, 1942.

LONG & LEVIT

Merchants Exchange, San
Francisco

HAWKINS, RHODES &
HAWKINS

153 N. Virginia Street, Reno

By BERT W. LEVIT

Attorneys for Defendant.

Receipt of a copy admitted this 4th day of January, 1943.

WILLIAM S. BOYLE

Attorney for Plaintiffs.

[Endorsed]: Filed Jan. 5. 1943. [25]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF
CONTENTS OF RECORD ON APPEAL

Milwaukee Mechanics' Insurance Company, a corporation, defendant and appellant herein, hereby

designates the complete record and all the proceedings and evidence in the above entitled action for inclusion in the record on appeal herein.

Dated: January 2, 1943.

LONG & LEVIT

HAWKINS, RHODES &

HAWKINS

By BERT W. LEVIT

Attorneys for Defendant.

Receipt of a copy admitted this 4th day of January, 1943.

WILLIAM S. BOYLE

Attorney for Plaintiffs.

[Endorsed]: Filed Jan. 5, 1943. [26]

[Title of District Court and Cause.]

STIPULATION RE TRANSCRIPT AND
EXHIBITS

It Is Hereby Stipulated that defendant and appellant need not file two copies of the reporter's transcript of the evidence and proceedings at the trial (as required by Rule 75, b, of the Rules of Civil Procedure); one copy thereof shall suffice.

It Is Further Stipulated that, in order to save expense, the Clerk of the District Court need not copy the exhibits introduced or offered at the trial, but may transmit the original exhibits as a part of

the record on appeal to the Circuit Court of Appeals.

WILLIAM S. BOYLE

Attorney for Plaintiffs.

LONG & LEVIT

HAWKINS, RHODES &

HAWKINS

By BERT W. LEVIT

Attorneys for Defendant.

So Ordered:

FRANK H. NORCROSS

District Judge.

[Endorsed]: Filed Jan. 5, 1943. [27]

[Title of District Court and Cause.]

SUPERSEDEAS BOND

Know All Men By These *Present*, That we, Milwaukee Mechanics' Insurance Company, a corporation, as Principal and Commercial Casualty Insurance Company, a corporation organized and existing under the laws of the State of New Jersey and duly authorized to act as Surety with its principal office located in the City of Newark, as Surety, are held and firmly bound unto Silvo Questa and Jennie Questa, husband and wife, in the full and just sum of Five Thousand Dollars (\$5,000.00) to be paid to the said Silvo Questa and Jennie Questa, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we

bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 31st day of December in the year of our Lord One Thousand Nine Hundred and Forty-two.

Whereas, lately at a District Court of the United States for the District of Nevada in a suit depending in said Court, between Silvo Questa and Jennie Questa, husband and wife, as Plaintiffs and Milwaukee Mechanics' Insurance Company, a corporation as Defendant, a judgment was rendered against the said Milwaukee Mechanics' Insurance Company and the said [28] Milwaukee Mechanics' Insurance Company having filed or being about to file in said Court a notice of appeal to reverse the judgment in the aforesaid suit, Silvo Questa and Jennie Questa, husband and wife, as Plaintiffs versus Milwaukee Mechanics' Insurance Company, a corporation as Defendant, on appeal to United States Circuit Court of Appeals for the Ninth Circuit, at a session of said Circuit Court of Appeals to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said Milwaukee Mechanics' Insurance Company shall prosecute its appeal to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, if Milwaukee Mechanics' Insurance Company fails to

make its plea good, then the above obligation to be void; else to remain in full force and virtue.

MILWAUKEE MECHANICS'
INSURANCE COMPANY

By FRED W. SULLIVAN
Vice President

[Corporate Seal]

Attest: F. E. CHADWICK,
Secretary.

COMMERCIAL CASUALTY
INSURANCE COMPANY

By D. W. PORTER
Attorney-in-fact

[Corporate Seal]

Form of bond and sufficiency of surety approved.

WILLIAM S. BOYLE
Attorney for Plaintiffs

FRANK H. NORCROSS
District Judge

(Duly Verified.)

[Endorsed]: Filed Jan. 5, 1943. [29]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK,
U. S. DISTRICT COURT

United States of America,
District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of

the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of Silvo Questa and Jennie Questa, husband and wife, Plaintiffs, vs. Milwaukee Mechanics' Insurance Company, a corporation, Defendant, said case being No. 199 on the civil docket of said Court.

I further certify that the attached transcript, consisting of 34 typewritten pages numbered from 1 to 34, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in "Appellant's Designation of Contents of Record on Appeal" filed in said case and made a part of the transcript attached hereto, as the same appear from the originals [32] of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

And I further certify that accompanying this record, in accordance with Stipulation and Order filed and entered January 5, 1943, are all the original exhibits, both plaintiffs' and defendant's, filed in the aforesaid cause; same being listed as follows:

Plaintiffs' Exhibits:

No. A—Small photograph of barn;

No. A-1—Enlarged photograph of barn;

No. B—Blue prints of barn;

No. C—Milwaukee Mechanics' Insurance Company fire insurance policy;

No. D—Cancelled check of Jennie Questa payable to Frank Hassett Inc. for \$75.00;

No. E—Specifications for barn;

No. F—Letter from Long & Levit to William S. Boyle;

No. G—Proof of Loss and Amended Proof of Loss;

No. H—Copy of letter, dated July 3, 1941, to Silvo Questa from Monaei L. Cupit, signed by Monaei L. Cupit, and another copy of the same letter signed by Monaei L. Cupit and Silvo Questa.

Defendant's Exhibits:

No. 1—Letter from William S. Boyle to Frank Hassett;

No. 2—Letter from Frank Hassett to William S. Boyle;

No. 3—Non-Waiver Agreement;

No. 4—Covering Note;

No. 5—Photostatic copy of Covering Note.

And I further certify that accompanying this record, and pursuant to Stipulation and Order filed January 5, 1943, is the original Transcript of Testimony filed in the aforesaid cause on July 3, 1942.

And I further certify that the cost of preparing and [33] certifying to said record, amounting to \$11.75, has been paid to me by Messrs. Long & Levit, of counsel for the appellant herein.

Witness my hand and the seal of said United States District Court this 3d day of February, 1943.

[Seal]

O. E. BENHAM

Clerk, U. S. District Court [34]

[Title of District Court and Cause.]

TRANSCRIPT OF TESTIMONY

TRIAL

Be It Remembered, That the above-entitled matter came on regularly for trial before the Court, without a jury, at Reno, Nevada, on the 23rd day of June, 1942, at 10:00 o'clock A. M., Hon. Frank H. Norcross, Judge, presiding.

Appearances:

William S. Boyle, Esq.,

Attorney for Plaintiffs

Long & Levit, By Bert W. Levit, Esq., and

Hawkins, Rhodes & Hawkins,

By Bryce Rhodes, Esq.,

Attorneys for Defendant.

The following proceedings were had:

Mr. Boyle: May it please the Court, do you desire the pleadings be read?

The Court: No, I have read the pleadings recently.

MR. SILVO QUESTA,

being first duly sworn, testified as follows:

Direct Examination

By Mr. Boyle:

Q. What is your name??

A. Silvo Questa. [1*]

(Testimony of Silvo Questa.)

Q. Where do you reside?

A. R. F. D. No. 2, Box 102, Glendale, Nevada.

Q. How long have you lived there?

A. Since 1919.

Q. Are you a citizen of Nevada? A. Yes.

Q. Where is the defendant a citizen of, if you know? A. Wisconsin.

Q. Who is Jennie Questa? A. My wife.

Q. Is she also a citizen of Nevada?

A. Yes.

Q. How long have you and your wife lived in Nevada? A. Practically all my life.

Q. Were you husband and wife during August, 1941? A. Yes.

Q. What, to your recollection, occurred on August 1, 1941?

A. I applied to Frank Hassett, who was agent for the Milwaukee Mechanics' Insurance Company, for insurance of \$7500.00 against loss or damage by fire on a large barn situated at Glendale ranch, Washoe County, Nevada, belonging to me and my wife.

Q. Where did you meet Frank Hassett, the agent?

A. I called up his office and arranged to meet him but I happened to meet him on the street before he got to his office.

Q. Did you have any conversation with him at the time you met him? A. Yes.

Q. Who were present?

(Testimony of Silvo Questa.)

A. Hassett and myself. [2]

Q. Where was the meeting place?

A. On Virginia Street near Colbrant's.

Q. What time was it?

A. Between 11:30 and 12 o'clock noon.

Q. What was said, if anything?

A. I asked Mr. Hassett to insure the barn for three years for \$7500.00 in the usual form with the usual policy which we made on other properties.

Q. Do you remember any other conversation at the time?

A. Yes, I asked him concerning Brown Motors Company, from whom I purchased a station wagon, International, about insurance on the car. He said he had insured the car.

Q. What further do you recollect?

A. Mr. Hassett assured me that he would insure the barn and that he would come down to the ranch to see the barn. I believed it should carry full insurance of \$7500.00. Mr. Hassett said he would issue the policy for \$7500.00 and he would deliver me the policy with the policy of the car.

Q. Did Mr. Hassett go to the ranch?

A. Yes, he went to the ranch in my absence and spoke to my wife.

Q. To your knowledge did he see the barn?

A. He couldn't help but see it.

Mr. Levit: I move that be stricken as not responsive.

Mr. Boyle: That is responsive.

(Testimony of Silvo Questa.)

Mr. Levit: It is hearsay.

The Court: Read the last question.

(Question read.)

Mr. Boyle: It would have to be within his knowledge so [3] therefore it wouldn't be hearsay.

The Court: He could state how the barn was located and whether anybody on the ranch could see it.

Q. Kindly explain that, Mr. Questa.

A. He stopped at the house and the barn is about a hundred yards from the house and it is a big barn, you couldn't help but see it. The barn was the biggest building at the ranch.

Q. How far from the house is it?

A. About a hundred yards.

Q. Situated from the house, what is its position?

A. Plain view.

Q. What, if anything, was done about insurance on the visit of Mr. Hassett?

A. He spoke to my wife and visited my home and then he left.

Mr. Levit: Objected to as hearsay.

Mr. Boyle: There is nothing hearsay about that. He said he spoke to his wife. It is not hearsay if it is proven upon his testimony further on that he had conversations with Mr. Hassett whether or not he had gone down to the ranch.

The Court: Whether he spoke to the wife, unless he was present, he wouldn't know that, of course, of his own knowledge. He might conclude that.

(Testimony of Silvo Questa.)

Q. When did you hear from Mr. Hassett again, if you ever did?

A. I met him on the street, on Virginia Street, about one o'clock in the afternoon about the middle of August and I again spoke to him about the insurance policy. All he said was that he would take care of it. [4]

Q. Did you see him at any time thereafter?

A. I saw him about 7:30 in the evening along about the last of August or the first part of September, at the Riverside bar.

Q. Did you speak to him? A. Yes.

Q. Do you remember what the conversation was and where he was sitting, if you recollect.

A. He was sitting at a table with some people and as I walked by I asked him about the policy.

Q. What, if anything, did he say?

A. He says, "I will take care of it" and "I will come down."

Q. What, if anything, occurred, if you recollect, after meeting Mr. Hassett at the Riverside bar?

A. On September 20th the barn burned down and was nearly destroyed.

Q. After the barn burned down did you see Mr. Hassett or communicate with him? A. Yes.

Q. Where?

A. At his office at the Heitman Building.

Q. Who were present?

A. Hassett and myself.

Q. What time was it?

(Testimony of Silvo Questa.)

A. It was early in the afternoon about four days after the fire, for I expected Hassett to show up at the ranch.

Q. What was the conversation had between you and Mr. Hassett?

A. I asked Mr. Hassett if he had my policy of insurance. I told him that the barn had burned down. Mr. Hassett replied for me not [5] to worry, that it was his worry from now on, and at the same time he put his hand to his head and said, "Oh Jesus, it is all my fault. Let me do the worrying. I have been so busy running back and forth to Las Vegas, Nevada."

Q. Did you have any other business with him thereafter? A. Yes.

Q. What was it?

A. I insured a box stall barn and saddle room and I called his attention about the insurance policy on the stone house.

Q. Did he deliver the policies? A. Yes.

Q. And after he delivered the last policies, if anything, what occurred about the barn?

A. I insured some onions with him after the barn burned.

Q. Did Mr. Hassett mention the barn insurance thereafter? A. Yes.

Q. When? A. After New Years.

Q. Was that in 1942? A. 1942.

Q. Where? A. In his office.

Q. What was said?

(Testimony of Silvo Questa.)

A. He said that he had talked to his boss and his boss said there was no insurance.

Q. What, if anything, further was said at that time?

A. I said, "Frank, if you think you are going to pull that over on me you are badly mistaken." I told him that I would advertise [6] him, that he had no business doing business in Nevada, that he belonged in California. Hassett then told me that he would take me down to California and pay all my expenses if I would go with him and see his boss.

Q. Did you see Mr. Hassett after that occasion?

A. Yes.

Q. When? A. On January 26th.

Q. What year was that?

A. 1942. He told me to be patient for three days.

Q. Did you hear anything further from him?

A. Yes, the last part of January. He told me that he had told his company to charge it up to advertisement and to pay it.

Q. And what further was said?

A. He said in twenty-five years he has been with the company he had learned something, that hereafter when he got an order he would write it down. He also said it was an order and if he had to get up on the witness stand he would admit it was an order.

Q. I will show you a picture and ask you if you are familiar with it? A. Yes.

(Testimony of Silvo Questa.)

Q. What is that picture?

A. Picture of the barn.

Q. Do you know who took it?

A. No, I do not know who took the picture?

Q. Is that an exact reproduction of the barn?

A. That is right.

Q. And you are positive that is a correct picture of the barn? [7] A. Yes.

Q. How often have you seen that barn?

A. Ever since 1919.

Q. At the time that picture was taken, could you tell us the date or approximate time it was taken?

A. I think it was taken around the summer of 1940.

Mr. Boyle: Your Honor, at this time I would like to offer this picture in evidence and request it be marked Plaintiff's Exhibit A.

The Court: It may be admitted.

Q. I show you a picture and ask you if that is the same picture enlarged? A. Yes.

Q. And it is an exact reproduction of the other picture, but an enlargement, by Curtis & Company?

A. Yes.

Mr. Boyle: We could bring Mr. Curtis here. We ask it be admitted in evidence as the same exhibit with this other one.

The Clerk: The same letter A?

Mr. Levit: No objection.

The Court: It may be admitted.

(Testimony of Silvo Questa.)

Clerk: I will mark that A-1.

Q. Now, Mr. Questa, were you familiar with the construction of the barn? A. Yes.

Q. Kindly describe it.

A. Well, it was an old barn, built before 1919, out of 12 x 12 timber, ironed and braced and it was built out of old mill tim- [8] bers from Virginia City and was in excellent condition.

Q. When you say it was in excellent condition, describe, clarify it, or state to the Court why you say it was in excellent condition.

Mr. Levit: When did he say the barn was built?

Mr. Boyle: Before 1919.

A. Well, I have always kept it up and I had all cement pillars put under each timber and had it leveled.

Q. When you say you had cement pillars, you mean piers put under the columns, is that what you mean? A. That is right.

Q. Describe those piers, what were they made of? A. Cement.

Q. Concrete? A. That is right.

Q. What were the dimensions, if you recollect?

A. Oh, about 5x5.

Q. How many feet thick?

A. Oh, about eight feet apart.

Q. I mean thick?

A. Oh, they were 2½ to 3½ feet thick.

Q. Were they or not originally in the barn or with the barn? A. No, I had them put in.

(Testimony of Silvo Questa.)

Q. When did you have them put in?

A. I had them put in a few years back, about three years back.

Q. How many did you have put in?

A. All the way under.

Q. But how many? There must have been a certain number. Do you [9] recollect? Take a look at that and refresh your mind if you can.

A. There was forty.

Q. Of the dimensions that you have described?

A. That is right.

Q. To what extent was the barn renovated? At that time that you mention about putting in these piers, if you recollect, or repaired or fixed up?

A. Well, I don't understand it.

Q. What work did you do at that time? Explain to the Court just what you did toward——

A. I took out all the floor inside and the stalls and had this put in and raised up and leveled up.

Q. Did you hire a carpenter to do it or did you do it yourself?

A. No, I hired a carpenter and some men.

Q. Was it a cement floor or wooden floor?

A. It was wood floor. I took the wood floor out.

Q. How long have you been in the ranching business?

A. All my life.

Q. And are you familiar with barns?

A. Yes.

Q. Did that particular barn leak or anything pertaining to construction?

A. In one corner.

(Testimony of Silvo Questa.)

Q. Had it leaked before since 1919?

A. No.

Q. Are you familiar with the value of the barn?

A. Yes.

Q. And what would you value the barn at? [10]

A. Fifteen thousand dollars.

Q. Do you mean it would cost that to replace it?

A. Yes.

Mr. Levit: I move the witness's answer be stricken because the replacement cost, your Honor, is not the value of the barn. The witness is not qualified to testify as to replacement cost. If your Honor feels he is qualified to testify as to value, we have no objection to that, but by his testimony now he has indicated the figure he gave us was in no sense a figure of value and he has not been qualified with regard to replacement costs and therefore I move his answer be stricken as to replacement value.

The Court: I will reserve ruling on that. We will take that up later.

Q. Mr. Questa, what was the value that you placed upon the barn about the time that it was destroyed?

Mr. Levit: May I ask for a clarification. When you say——

Mr. Boyle: His estimation he placed upon it, in his own estimation.

A. Fifteen thousand dollars.

Q. What amount of insurance did you request on the barn? A. \$7500.00.

(Testimony of Silvo Questa.)

Mr. Levit: We make the same motion as to the last answer, your Honor.

Q. Now will you kindly describe the fabric of the structure, pertaining to uprights and timbers and girders and other things that made for the construction. Kindly describe. [11]

A. All the timber was 12 x 12 and 10 x 10, ironed and braced under each and every pillar that run up.

Q. Now this particular drawing that I show you, is that a reproduction of the barn? A. Yes.

Q. That is a reproduction as you remember it?

A. Yes.

Q. And is there any doubt in your mind as to any of the sizes of timber, etc. that were placed herein?

A. No. I think that is a perfect reproduction of the barn.

Mr. Boyle: We offer these particular drawings for identification, your Honor. Mr. Levit had the privilege of going over a set of the plans.

Mr. Levit: In the first place I make an objection to the admission of those blueprints.

Mr. Boyle: They are only offered for identification, so there is no use objecting.

Mr. Levit: Then we withdraw the objection, and as far as counsel's statement is concerned, as a matter of fact I had a chance to examine those plans about fifteen minutes. I borrowed a set from counsel and immediately returned them and I wasn't offered——

(Testimony of Silvo Questa.)

Mr. Boyle: It is customary to hand them to counsel. I merely stated you had had the plans in your possession. If there is any question that these are not the plans, we might as well take it up.

Mr. Levit: I don't dispute that, I just wanted the Court to understand the situation. [12]

Mr. Boyle: That is the reason I told the Court you had already seen them, because I didn't hand them to you so you could peruse them.

The Court: I think the Court understands that situation.

Clerk: Plaintiffs' B for identification.

Q. Now, Mr. Questa, when you spoke to Mr. Hassett about the insurance, did you discuss the premium?

A. We both spoke about it being with the same company under the same conditions set forth in those policies issued by the Milwaukee Mechanics' Insurance Company. It was customary for Mr. Hassett to prepare the policies and I would accept them, for I relied upon him.

Q. Were you in position to pay the premiums at all times? A. Yes.

Q. How long had you done business with Mr. Hassett before?

A. Why a month or two before, a couple of months before.

Q. I show you a certain insurance policy and ask you if that is the customary insurance policy acquired from Mr. Hassett and if you acquired that one from Mr. Hassett?

(Testimony of Silvo Questa.)

Mr. Levit: Objected to; so far the witness hasn't testified he customarily acquired any policies from Mr. Hassett. If you want to establish the usual form of policy in Nevada as prescribed by law, we have no objection, but so far the witness hasn't testified how many policies he had from Mr. Hassett.

Mr. Boyle: I think his testimony was to the effect it was customary for Mr. Hassett to prepare the policy and he would accept it. I asked the witness if that is the customary form of [13] policy presented to him by Mr. Hassett.

Mr. Levit: It is conclusion of the witness. Let the witness testify as to how many times this happened before. He states this was the customary form.

Mr. Boyle: If it was the customary form, surely it isn't conclusion. Customary means something carried on as custom.

The Court: He can testify whether that is similar to other policies received.

A. Yes.

Mr. Boyle: I would like to offer this in evidence and request it be marked Plaintiffs' Exhibit——

The Court: Did I clearly understand that he did testify that this is similar?

A. Yes.

The Court: It may be admitted.

Clerk: Plaintiffs' "C".

Q. Now, Mr. Questa, did you at any time get any insurance policies, or policy, from the Milwau-

(Testimony of Silvo Questa.)

kee Mechanics' Insurance Company after the barn burned down? A. Yes.

Q. Did you pay for them? A. Yes.

Q. Why did you do business with the company after the barn burned down?

A. Well, Mr. Hassett assured me that his company——

Mr. Levit: We ask that the answer be stricken. It is irrelevant to any issue in the case, what his motives were.

The Court: I will permit it, subject to statement of [14] conversations and the legal phase we will consider later.

Q. Did you have any conversation at that time about subsequent policies of insurance that you acquired, that you testified to that you had acquired and paid for?

A. He assured me that his company would pay for this loss and that is why I gave him the other business.

Q. Now on or about the month of August, August 15, 1941, that was how long before the barn burned down? A month and five days?

A. A month and five days.

Q. Did you pay Mr. Hassett any money at that time?

A. Yes, he sent his bookkeeper to the ranch and I gave him a check for \$75.00.

Q. Do you remember what that particular check was for?

A. That was for the insurance on the new dwell-

(Testimony of Silvo Questa.)

ing that was being built.

Mr. Boyle: Your Honor, at this time I would like to offer this check in evidence.

Mr. Levit: No objection.

Q. I show you signature and ask you if you are familiar with that signature? A. Yes.

Q. And this is the check that you paid to him?

A. Yes.

Mr. Boyle: We offer it in evidence.

Clerk: Plaintiffs' "D".

PLAINTIFF'S EXHIBIT D

Sparks, Nevada, Aug. 15, 1941.

Pay to the

Order of Frank Hassett Inc. \$75.00

Seventy five and no/100 Dollars.

94-61 Sparks Branch 94-61

First National Bank

in Reno

Sparks, Nevada

Jennie Questa.

(Back of Check)

Pay to the order of 94-2 First & Virg. Branch
94-2 First National Bank of Nevada Frank Hassett,
Inc.

Pay to the order of any bank, banker or trust
company or through Reno Clearing House. All prior
endorsements guaranteed. Aug. 16, 41 0004. First
National Bank of Nevada, First & Virginia Branch,
Reno, Nevada. 94-2.

[Endorsed]: Filed June 23, 1942.

(Testimony of Silvo Questa.)

Mr. Boyle: You may cross-examine.

Cross-Examination

By Mr. Levit:

Q. Now, Mr. Questa, this check that has just been introduced in [15] evidence, this Plaintiffs' Exhibit D, for \$75.00, that was a payment on premium, was it not, on the policy that was introduced in evidence as Exhibit "C"?

A. As far as I know it was a check paying for insurance on the new dwelling that was being built.

Q. You identified this policy which is marked Exhibit "C" as being one, I think, that you received from Mr. Hassett, is that right?

A. That I received?

Q. What is this policy that you identified a few minutes ago?

A. That is policy on the new house.

Q. That is the policy then that that check was to pay the premium on, isn't it? A. Yes.

Q. What was the premium on that policy, Mr. Questa? A. It was \$175.00.

Q. And how much is the check for?

A. \$75.00.

Q. Now you paid that on August 15th. The policy was delivered to you when, do you recall?

A. No, I don't recall.

Q. What is the date of the policy?

A. The date of the policy is March, 1941.

Q. March 25, 1941, isn't it? A. Right.

(Testimony of Silvo Questa.)

Q. Now you hadn't paid the balance of the premium on that policy up to August 15, had you?

A. I don't remember. [16]

Q. Well, isn't it a fact that Mr. Hassett sent his bookkeeper out to the ranch to collect a premium of \$175.00 and all you gave him was a check for \$75.00? Don't you remember that?

A. I do not.

Q. But you are not sure but what that might be correct, Mr. Questa, is that right?

A. I don't know.

Q. When did you pay the balance of the premium on that policy?

A. I have been paying premiums to Hassett for quite a while.

Q. What other policies did you get from Mr. Hassett before this one here?

A. For the new dwelling.

Q. That is the one we have already talked about. What others? A. None before.

Q. You got a policy on your car, didn't you?

A. Well yes. That was in July, last part of July.

Q. But the only fire insurance policy that you got was the one introduced in evidence as Exhibit "C", isn't that right? A. At that time?

Q. Well, before the fire, anytime before the fire?

A. Yes.

Q. Well, what did you mean then, Mr. Questa, when you said that the policy was in the form that

(Testimony of Silvo Questa.)

you had been accustomed to receiving from Mr. Hassett? As a matter of fact, that is the only policy in that form that you ever received from Mr. Hassett prior to that fire, is it not?

A. I received that policy of the car.

Q. Was that in the same form? [17]

A. In what form?

Q. In the form that you just identified, the form of Exhibit "C"? A. Yes.

Q. What do you understand by the word "accustomed" or "customary", Mr. Questa?

A. Explain yourself. I do not understand you.

Q. You testified a few moments ago that this policy, which was introduced in evidence, was the same form of policy that you had been accustomed to receiving from Mr. Hassett, didn't you?

A. Yes, I did.

Q. As a matter of fact, you had never received any other policy from Mr. Hassett prior to this fire in that form, had you?

A. This is the only policy I had received in that form that I can remember.

Q. Now do you know what a binder or a cover note is? A. A binder?

Q. Or a cover note? Did you ever hear those expressions?

The Court: A binder or cover note?

Mr. Levit: Well, binder is what it is called, a cover note, they mean the same thing, your Honor.

The Court: On the ranch a binder is something

(Testimony of Silvo Questa.)

we used to use to bind wheat and hay, etc, when I was on the farm.

Mr. Levit: I can assure your Honor I never heard the expression until we heard it here, so perhaps it is a bit confusing.

Q. Let me ask you this, Mr. Questa, you are familiar with the [18] fact, are you not, that when insurance is written up, the policy is not issued until some time later, that it is customary to issue a binder or cover note, slip of paper, evidencing the insurance, before the policy is issued?

A. I do not understand that question.

Q. Well, as a matter of fact, hadn't you ever received anything from Mr. Hassett other than policies themselves? Hadn't you ever received any cover notes from Mr. Hassett?

Mr. Boyle: You are talking about before the fire now?

Mr. Levit: Well, at any time.

Q. Had you never received anything except a formal policy from Mr. Hassett?

A. I have received what do you call that, binder—I do not understand.

Q. Well, as a matter of fact, before you got this particular policy, didn't you receive from Mr. Hassett a cover note, protecting the building against loss to the amount of \$6500.00?

A. I received what you are speaking about when I insured the onions. I received what you are talk-

(Testimony of Silvo Questa.)

ing about. I did not receive the policy, but I received something else.

Q. A cover note?

A. That must have been a cover note.

Q. That was after the fire, wasn't it?

A. Yes.

Q. Don't you recall when this Milwaukee Mechanics' policy on your new dwelling, as you call it, was applied for that it was originally talked about in the amount of \$6500.00 instead of \$7000.00? [19]

A. I don't remember mentioning six thousand dollars on the new dwelling.

Q. \$6500.00, do you remember that?

A. I think it was Mark Yori that——

Mr. Boyle: Are you talking about the barn or the dwelling?

Mr. Levit: I am talking about the new dwelling now.

A. Mr. Yori mentioned \$6500.00.

Q. Don't you recall that you received a cover note for \$6500.00 from Mr. Hassett?

A. I do not.

Q. You do not remember that? And didn't Mr. York tell you that he had a cover note for \$6500.00 on that house?

A. Mr. Yori called up Frank Hassett and mentioned \$6500.00.

Q. Didn't he tell you afterwards that he had that \$6500.00 cover note? A. No.

(Testimony of Silvo Questa.)

Q. Now after that insurance policy was written, Mr. Hassett went out to look at the house, didn't he?

A. Yes.

Q. That was some time around March or April or June, somewhere around there—when was that, do you remember?

A. I don't know. It was in the spring of the year.

Q. You remember when Mr. Hassett came out there?

A. Yes.

Q. And you do not recall on that occasion Mr. Hassett told you that he had issued a binder or cover note in the amount of \$6500.00? [20]

A. Not that I remember.

Q. But you know that it was customary, didn't you, when insurance was bound, before the issuance of a policy, to use a cover note or binder?

A. How was that?

Q. I say you knew when insurance was written and agreed upon that before the policy was issued it was customary to issue a cover note or a binder?

A. No, I do not. When I put in an order for insurance, I think it is insured right then.

Q. You never heard of any cover notes then before this fire at all?

A. No.

Q. When was the first time you ever heard of a cover note?

A. Right now.

Q. You said, I think, when you insured your onions after the fire you received a cover note?

A. I never heard of it before until right now.

(Testimony of Silvo Questa.)

When you mentioned cover note, I didn't even know you call it a cover note.

Q. When you insured your onions, what happened?

A. I received one of those so-called cover notes, if that is what it is.

Q. Later on it was replaced by a policy, wasn't it?

A. No, I don't think he ever sent a policy for the onions.

Q. Was the policy cancelled?

A. No, the onions were sold.

Q. So that there never was any occasion for issuing a policy, is that right? [21]

A. I don't know, but I told him the onions would be in there maybe a month, maybe two months.

Q. You said, I think, that you remember the occasion when Mr. Hassett was out to your ranch with regard to the insurance on the house. Do you remember when that was?

A. That he was out looking at the new house?

Q. Yes.

A. It was in the spring of the year.

Q. Don't you remember at that time Mr. Hassett asking whether you owned the other buildings on the ranch?

A. I don't remember that.

Q. Do you remember the conversation that took place at all?

A. He said the house was worth \$7,000.00, that I should carry \$7,000.00 on it.

(Testimony of Silvo Questa.)

Q. Instead of \$6500.00?

A. That is right.

Q. Did you have \$6500.00 on it before that?

A. I thought so. Mark Yori called him up for \$6500.00.

Q. Don't you remember, Mr. Hassett, on that occasion, asking you if you owned the other buildings?

A. No.

Q. Don't remember Mr. Hassett, on that occasion you did and he said he would like to insure them all?

A. No.

Q. And you told him you were busy but you would talk to him about it some other time? A. No.

Q. You don't recall that? [22] A. No.

Q. Is it your testimony you don't remember whether that occurred or not or that it didn't occur?

A. It didn't occur.

Q. Now you said that this barn was built before 1919. How long before 1919 was it built?

A. I couldn't say, but that is when I went to that ranch, in 1919.

Q. It wasn't a new barn then by any means, was it?

A. It was an old barn, but it was in excellent condition.

Q. I am just speaking now of the age. Isn't it a fact that at the time that the barn burned down it was pretty close to fifty years old?

A. I couldn't say; I don't think that old.

Q. Do you remember when Mr. and Mrs. Yori got married?

(Testimony of Silvo Questa.)

A. That was before my time.

Q. It was about 35 years ago, you don't remember that? A. No.

Q. You wouldn't say that the barn hadn't been standing for some time before that because you don't know? A. I don't know.

Q. When did you paint the barn?

A. I painted the barn one time there was an outfit going through the country with a big spray.

Q. When was that?

A. Quite a few years back.

Q. Well, it was more than ten years before the fire, wasn't it?

A. Well, I couldn't say; I couldn't say; it might have been eight [23] years, might have been ten.

Q. In order to refresh your recollection, do you recall the statement that you gave to me in Mr. Boyle's office on January 26, 1942?

Mr. Boyle: That is the deposition you took, is it not?

Mr. Levit: I wouldn't call it a deposition. He was sworn and examined.

Q. You remember the occasion, don't you, Mr. Questa? A. Yes.

Q. Do you remember on that occasion I asked you to tell me all the work you had done on the barn within the last ten years before the fire, do you remember that? A. Ten years?

Q. Yes.

A. What did I say? I don't know.

(Testimony of Silvo Questa.)

Q. Well, you remember I asked you:

“Q. Did you do any work on the barn?

A. I would say.

Q. What did you do on it?

A. I put in all cement pillars under it and had it all straightened out.

Q. Did you do the work yourself or have it contracted?

A. I had it contracted.

Q. Who did the work?

A. One of the boys is dead and there is still one alive.

Q. What were their names?

A. Joe Barbagola. [24]

Q. When was that work done?

A. Done in the summer of '38 or '39.

Q. How much did you spend on it at that time?

A. I couldn't remember really.

Q. Well, can you give me an approximation?

A. Around four or five hundred dollars, between four and five hundred.

Q. That is in all, including material?

A. Well, that is the labor and not counting my men's labor. I can remember I paid them so much a day, \$5.00 or \$6.00 a day, yes, \$6.00 a day; they board themselves, and I bought sand and gravel and had my men haul rocks.

(Testimony of Silvo Questa.)

Q. Did this figure of four or five hundred dollars include that?

A. Yes, that will about catch it.

Q. That will about cover the whole thing. Did you put any other work on it?

A. Yes, I fixed some of the lower windows and upper doors, used some shingles and things.

Q. About how much would you say that amounted to?

A. My working men did that. I should judge maybe \$150.00, about \$150.00.

Q. So that in all the repairs that you put on the barn since you took over the property in 1932 would amount to say an approximation of \$750.00?

A. Yes, about that; oh yes.

Q. Do you want to add to that? [25]

A. Yes, I had them take out all the floor.

Q. The floor is not included in this work you have been telling me about?

A. No.

Q. You took out the floor and put down a new floor?

A. I was going to put down a new floor.

Q. You hadn't done that?

A. Before the cement went in in the pillars I had to take all the stalls and floor out.

Q. Well, how much would you say that work amounted to?

(Testimony of Silvo Questa.)

A. Oh it took about a week, four men, oh, a hundred dollars or more."

Now, do you recall so saying?

A. That is right.

Q. Does that refresh your recollection as to whether since 1932 you did any painting on the property?

A. Yes, I forgot to testify about painting.

Q. Then you forgot?

A. You never asked me.

Q. I asked you to tell all the work you did and you did not mention painting.

A. Sure I done painting.

Q. You think the painting was done about eight years before the fire? A. Yes.

Q. You are not sure, it might have been more than ten years?

A. I wouldn't say, I am not sure. [26]

Q. When did you reshingle the roof?

A. The roof was never reshingled.

Q. At the time of the fire there was no floor in the barn? A. No.

Q. And there were no stalls in the barn?

A. No.

Q. What was the condition of the floor in the hay loft? A. Good.

Q. Isn't it a fact there were big holes in it, you could get thru to the ceiling?

A. Why no. We pulled the boards out to get air to the onions.

(Testimony of Silvo Questa.)

Q. Now going back to your first conversation with Mr. Hassett, in regard to this insurance on the barn. You said that it took place in August of 1941, is that correct? A. Yes, along in there.

Q. You think it might have been before that?

A. No, just about August 1st.

Q. Now you recall that you bought a station wagon on July 25th, don't you, of 1941?

A. Yes.

Q. And according to your recollection the first discussion took place a few days after that, is that right? A. Yes.

Q. Did you ever discuss insurance on the barn with Mr. Yori?

A. Well, Mr. Yori recommended——

Mr. Boyle: Answer yes or no. I didn't want to object to the question as being too broad but he asked you a question you can answer yes or no and explain later. [27]

Witness: What is the question please?

(Question read.)

A. Yes.

Q. When was that?

A. Along in the spring, when I was building the new house.

Q. Do you recall ever having that barn insured?

A. Yes.

Q. When did you have it insured?

A. Years back it was insured.

Q. How long back? A. I wouldn't say.

(Testimony of Silvo Questa.)

Q. Well, was it before 1940?

A. Before 1940?

Q. Yes. A. No.

Q. It was after 1940?

A. No. What is the question again?

Q. I don't want to confuse you. You said you couldn't remember how far back and I asked you if it was before 1940.

A. Before 1940—must have been before 1940.

Q. Was it ever insured before that time?

A. I don't remember.

Q. You got the insurance thru Mr. Yori, didn't you?

A. No. We were talking about some insurance but there was no policy issued.

Q. I thought I understood you to say a few minutes ago that you did have the barn insured some years back?

A. Yes, way back before the depression. [28]

Q. How much did you have it insured for?

A. I wouldn't remember.

Q. It wasn't for more than five thousand dollars, was it? A. I couldn't say.

The Court: This is our usual recess time. We will take a short recess for 10 minutes.

(Recess taken at 11:00 o'clock.)

11:10 A.M.

MR. QUESTA

resumed the witness stand on further cross-examination by Mr. Levit.

Q. Mr. Questa, this policy you had on the barn at the time of the depression, or before the depression—I have forgotten what you said—that was cancelled for non-payment of premium, wasn't it?

A. No, there was never a policy issued.

Q. Well, I understood you to say that you did have the barn insured some time before?

A. Yes, before that.

Q. I mean you said around the time of the depression, didn't you?

A. We didn't have any insurance at the time of the depression.

Q. Well, when did you have it insured before the Hassett insurance that we are talking about?

A. How is that?

Q. I say, when did you have it insured before?

A. Insured along in '21, '22 and '23.

Q. Is that the only time you ever had it insured?

A. Yes. [29]

Q. You do not remember what company that was in? A. No.

Q. And I ask you now, is it not a fact that that policy was cancelled for non-payment of premium?

A. No.

Q. You say it is not a fact?

A. No, it is not a fact.

(Testimony of Silvo Questa.)

Q. And you didn't have any insurance then on the barn between 1923 and the time that this suit involves?

A. I don't remember how many years the barn was insured for.

Q. Well, I am just asking for your best recollection. It was uninsured for about, oh, 17 years then, wasn't it?

A. Oh no. Maybe about three or four.

Q. Well, it was just uninsured for three or four years? A. Yes.

Q. Then your testimony now is that you had insurance on it in the year 1938?

A. No, I had no insurance in 1938. I had insurance, I remember, in 1922 and '23 and then years and when the depression hit, I didn't carry no insurance; I couldn't.

Q. So it wasn't insured then between 1924 and 1941?

A. I can't say how many years it was insured.

Q. I mean that is your best recollection?

A. Yes.

Q. Now you are not quite sure about these dates that you have given us, are you, as to when these conversations occurred?

A. What conversations?

Q. With Mr. Hassett? [30]

A. Yes, very sure.

Q. You are very sure that the first conversation occurred around the early part of August in 1941?

(Testimony of Silvo Questa.)

A. Mr. Hassett called me up on the phone on insurance for the station wagon.

Q. You are sure that your first conversation with Mr. Hassett, concerning the insurance on the barn, was after you purchased the station wagon?

A. I had talked to Mr. Hassett before that.

Q. About insurance on the barn?

A. No, not about insurance on the barn.

Q. Then I will repeat my question—are you sure that your first conversation with Mr. Hassett about insurance on the barn took place after you purchased the station wagon?

A. I can't remember.

Q. Do you recall in this examination that we had in Mr. Boyle's office in January of 1942 that you told me your first conversation with Mr. Hassett, with regard to insurance on the barn, was a few days before you purchased the station wagon?

A. I purchased the station wagon on the 25th of July.

Q. Do you recall stating to me in Mr. Boyle's office that you had your first conversation with Mr. Hassett about insurance on the barn before you purchased the station wagon, three or four days before, to be exact?

A. It is so far back it is almost a year; I am not sure about that.

Q. How many conversations in all do you remember having with Mr. Hassett about this insurance on the barn? [31]

(Testimony of Silvo Questa.)

A. Oh, three that I know of.

Q. Now the first one, then the next one you told us about was in the middle of August? A. Yes.

Q. That was where? A. On the street.

Q. And the next one was the last of August at the Riverside bar? A. Yes.

Q. Was any one else present beside you and Mr. Hassett at any of these conversations?

A. At the Riverside bar he was sitting with some people, but I don't know who his friends were.

Q. Did you, at any of these conversations that you had with Mr. Hassett, other than the first conversation, mention anything regarding the amount of insurance that you desired?

A. Will you repeat that again?

(Question read.)

A. I don't understand that.

Mr. Boyle: I might be able to explain. During that discussion——

Mr. Levit: Just a minute. I don't want you to do any explaining. He is doing all right. I will try to get at it another way.

Q. You told us the first conversation you had with Mr. Hassett you told him you wanted \$7500.00 insurance on the barn, you recall that?

A. Yes.

Q. At that conversation did you mention any other figure to [32] Mr. Hassett, that first conversation?

A. I mentioned four thousand dollars for the

(Testimony of Silvo Questa.)

stone house. He was supposed to insure the stone house too.

Q. You mean the old house, as you call it?

A. The stone house. It was just built four years ago.

Q. Then suppose you go back now and tell us this first conversation, just what was said by each of you in detail, because you didn't say anything about the house before.

A. Well, I wanted to insure the barn and the stone house, \$7500.00 on the barn and four thousand dollars on the stone house.

Q. You are quite sure about that, are you?

A. Yes.

Q. Did you say anything to him in that first conversation about the automobile insurance?

A. He called up about the automobile insurance, found out I had bought this station wagon, and he called me up at the ranch and told me the best thing I can do is to tell the Brown Motors to let him have all the insurance on that car.

Q. Was that before or after this first conversation about the barn?

A. That was over the telephone. That was before the conversation about the barn.

Q. That is before you talked to Mr. Hassett about the barn. Now, Mr. Questa, I am going to call your attention to statement that you made to me in Mr. Boyle's office on January 26th of this year, and ask you if recall testifying in this way:

(Testimony of Silvo Questa.)

“Q. Mr. Questa, when did you first discuss insurance on this barn with Mr. Hassett? [33]

A. When I first discussed it, it was along in the latter part of July.

Q. Of 1941? A. About the barn, yes.

Q. And where did that conversation take place?

A. It took place in town here on the street.

Q. You met Mr. Hassett on the street?

A. Yes.

Q. Now your insurance, or some of it had been handled through—— A. Mark Yori.

Q. What is his name? A. Mark Yori.

Q. Had you ever discussed insurance on the barn with Mr. Yori? A. No.

Q. So that the first conversation you had about the insurance on this barn was with Mr. Hassett? A. That is right.

Q. And it was in July of 1941?

A. Yes.

Q. How do you fix that date, Mr. Questa?

A. Well, I fix the date by I had bought a station wagon on the 25th of July.

Q. And was it on the same day that you——

A. No, I had talked to him about the barn and I told him that barn cost \$15,000.00 to build.

Q. Before you get that far, I am just trying to fix [34] the date of this conversation. It was how long after you purchased the automobile on July 25th?

(Testimony of Silvo Questa.)

A. I had talked to him about the barn before that.

Q. Oh, you talked to him before that?

A. Yes.

Q. How long before that?

A. I couldn't be safe on the dates; a little while before.

Q. Would you say it was as much as a month before? A. Oh no.

Q. About a week before?

A. A few days, yes.

Q. A few days before July 25th?

A. That is right."

Now do you recall making that statement to me in Mr. Boyle's office?

A. Well, I guess that is the statement.

Q. It sounds right, doesn't it? A. Yes.

Q. Does that refresh your recollection as to whether or not this conversation, this first conversation, that you had with Mr. Hassett took place in August or in July?

A. In July or the first part of August, as far as I can remember.

Q. But you know, do you not, that you purchased the station wagon on July 25th?

A. That is right.

Q. And you recall that you testified today on direct examination that your first conversation was with Mr. Hassett after you [35] purchased the station wagon? A. That is right.

(Testimony of Silvo Questa.)

Q. And in January you said it was before you purchased the station wagon, is that right?

A. I guess that is right.

Q. What then is your statement now as to your best recollection as to whether this first conversation took place before or after the purchase of the station wagon?

A. It must have been after the station wagon, on the last of July or first of August.

Q. So that your testimony now is that the other statement you gave me in January as to the date of the conversation is incorrect?

A. It must have been.

Q. Now you stated that you talked to Mr. Hassett about the motor car, that is, the insurance on this station wagon, at that same first conversation?

A. Yes.

Q. Now of course you recall, don't you, that when you gave me this statement in January you said nothing about any talk about insurance on the motor car?

A. I didn't. You didn't ask me. Did you ask me?

Q. We will come to that later, but you testified in January that the conversation took place before you purchased the motor car, isn't that correct?

Mr. Boyle: I think he just answered that and told you so.

Q. Therefore, if the conversation took place before the motor [36] car was purchased, you couldn't

(Testimony of Silvo Questa.)

have had any conversation at that time with Mr. Hassett about insurance on the motor car, could you? A. How do you mean?

Q. Well, the conversation about the motor car related to something that took place after you bought it, didn't it? A. Yes.

Q. All right. Now a moment ago you stated that in addition to insurance on the barn in this first conversation, and in addition to insurance on the motor car, you discussed with Mr. Hassett insurance on your house, the stone house, the old house, is that right?

A. Then I spoke about the insurance on the barn.

Q. Yes. We will call it the first conversation, so as to make it perfectly clear what we are talking about. The only time you talked to Mr. Hassett about the barn insurance, you discussed the motor insurance with him, that is your testimony, is it not? A. The car insurance——

Q. The barn insurance.

A. ——he called me on the phone.

Q. I understand that, but I am speaking now of the first barn conversation which, according to your present testimony, took place after he called you on the phone and after you had bought the motor car, is that right? A. Yes.

Q. Now I think you said that you mentioned that you wanted four thousand dollars insurance on the house? A. Yes, on the house. [37]

(Testimony of Silvo Questa.)

Q. And \$7500.00 insurance on the barn?

A. Yes.

Q. Now will you repeat, please, as nearly as you can remember it, the words of that conversation? You met Mr. Hassett on the street and who said what?

A. I asked him to insure the barn for \$7500.00.

Q. Just a moment—will you try and state the conversation, to the best of your recollection, in the actual words—I said so and so and he said so and so, as nearly as you can remember.

A. I asked him to insure——

Mr. Boyle: Just give the words. For instance, I said to Mr. Hassett—that is what he wants.

A. I said, “Frank, I want you to insure the barn for \$7500.00 and I want you to insure the stone house for \$4,000.00”, and he said he would insure the barn——

Q. Well, what did he say?

A. He said he would take care of the insurance.

Q. What were his words, as you remember them?

A. He said, “I will take care of it.”

Q. Did he say that as to both the barn and the house? A. Yes.

Q. What else was said at the conversation about this insurance? I am not speaking about the automobile insurance now.

A. And he said he would come down to the ranch to look—“I will come down and look.”

Q. Did you ask him to come down?

A. No, he said he would come down.

(Testimony of Silvo Questa.)

Q. You didn't ask him to? [38]

A. Well, I asked him some time after that to come down, which he wasn't coming.

Q. I am speaking now only of the single conversation, the first conversation. Did you ask him to come down and see the barn?

A. Yes, I asked him to come down and see the barn.

The Court: Let me see if I understand. Do you understand that is the first conversation on the street?

A. That is on the street.

Q. What did you say about coming down to see the barn?

A. Because I believed it should carry full insurance, \$7500.00, because I thought the barn was worth much more than that.

Q. You thought if Mr. Hassett went down there you might agree on some other amount of insurance?

A. Well, I don't know as we would agree on another amount, but he came to the ranch and saw the barn.

Q. Didn't you say just a moment ago the reason you wanted him to come down and see the barn was that you wanted more insurance than that and you thought if he saw it you could get more insurance?

A. Well, as far as I know, they all take a look at buildings before they insure and what I know about insurance is if you don't carry enough, the

(Testimony of Silvo Questa.)

insurance company won't stand for that and if you insure for too much, why is it just too bad.

Q. In other words, you knew that the insurance company would want to see the barn in order to determine how much insurance should be carried on it?

A. Oh I knew that \$7500.00 wasn't over-insured. [39]

Q. That was your knowledge?

A. That was my knowledge.

Q. But I am speaking now of the insurance company's knowledge.

A. I don't know about the insurance company's knowledge.

Q. Now, Mr. Questa, what did you say to Mr. Hassett with regard to his coming to the ranch, giving us your exact words, as nearly as you can?

A. Well, didn't I just answer that question?

Q. I don't think so.

A. I told Frank to insure the barn and insure the house, the stone house, and I asked him to come down to the ranch.

Q. What did you say when you asked him?

A. "Come down to the ranch and see the barn," and he told me he would insure it and take care of it and that he would come down.

Q. You say he told you he would insure it. A moment ago when I asked you for the exact words you replied, "I will take care of it," is that correct?

(Testimony of Silvo Questa.)

A. He said, "I will take care of it," yes.

Q. No more and no less?

A. He said he would come to the ranch.

Q. And he said he would come to the ranch.

Now, Mr. Questa, you remember in January, when I questioned you about this conversation, I asked you to relate the conversation to me, do you remember that?

A. No, I do not remember.

Q. In order to refresh your recollection, I will ask you if you recall testifying as follows, immediately following the part I [40] just read as to when the first conversation took place. We ended up, you remember:

"Q. A few days before July 25th?

A. That is right.

Q. And you met Mr. Hassett on the street?

A. Some place, yes. I know I wasn't down to his office.

Q. At some place in town?

A. That is right.

Q. Was any one else present at that conversation?

A. No.

Q. Now what was your conversation with him at that time?

A. I told him I wanted to insure that barn, knowing he has insurance on the new house, and I told him I wanted to insure that barn and he asked me what I thought of the barn.

(Testimony of Silvo Questa.)

I said, "The barn is a huge thing; it cost \$15,000.00 or more to build it today."

Q. You told him that?

A. That is right. So we figured on \$7500.00.

Q. When you say "we figured," tell me the conversation.

A. We agreed on \$7500.00.

Q. As to the amount of the policy?

A. That is right, and he was going to come down and see.

Q. See the barn?

A. That is right."

Now, Mr. Questa, do you recall so stating? [41]

A. That is right.

Q. You didn't say anything to me in that conversation, as you related it, about any insurance on the house, did you?

A. I guess I didn't.

Q. How do you account for that, Mr. Questa?

A. Well, it was just a lucky thing, I guess, that the house didn't burn down, or I would have the same trouble.

Q. I say how do you account for the fact when you related the conversation to me before in January, you did not state anything about any conversation concerning the house and insurance on the house?

A. No.

Q. Can you account for that?

A. Well, it was taken care of then. He had his

(Testimony of Silvo Questa.)

policies then and the stone house hadn't a policy, so why bring that up?

Q. You didn't get the policy on the house, did you, until after the fire?

A. That is right.

Q. And as a matter of fact, that policy was issued to run from a date after the fire on the barn, was it not?

A. Issued to run after the fire?

Q. Isn't it a fact that that policy on the old house was dated and issued on September 30, 1941, after the fire?

A. Yes, I guess it was, I don't know, but it was supposed to have been issued long before that.

Q. In other words, your testimony is that this testimony was that the policy you were talking to Mr. Hassett about was to cover both the barn and the house, that is correct? [42]

A. Yes.

Q. Now did you ever give Mr. Hassett any more information about what you wanted to cover, in regard to the contents of the house?

A. The furniture, I believe, insure some furniture.

Q. When did you tell him about that?

A. I couldn't—I don't remember the date of that. It must be late in the summer, when we bought the furniture. I don't know what date.

Q. When you bought the furniture, did you say?

A. After we bought the furniture.

(Testimony of Silvo Questa.)

Q. I am speaking of the furniture in the old house, in the stone house.

A. In the stone house? If he insured any furniture in the stone house, he made a mistake, because he was supposed to have insured saddles in the saddle room.

Q. When did you tell him about saddles in the saddle room?

A. After the fire, when I insured the box stall barn and the little saddle room.

Q. And you didn't tell him then anything in connection with furniture in the house?

A. The furniture in the big house has been insured.

Q. For how much?

A. Three thousand dollars.

Q. Will you bring in your policy this afternoon on the old house?

A. Yes.

Q. Now do you remember, Mr. Questa, that you had a talk with [43] Mr. Yori, who is sitting in the courtroom?

A. I talked to Mr. Yori, yes.

Q. After the fire, about this insurance?

A. Yes, I must have.

Q. Mr. Yori has handled your insurance for some time, hasn't he?

A. Yes.

Q. He is related to you, is he not?

A. Yes.

(Testimony of Silvo Questa.)

Q. Now do you remember telling Mr. Yori, after the fire, that you had told Mr. Hassett that you wanted some insurance and that you wanted Mr. Hassett to go down to the ranch and fix the insurance up and you wanted to know about what he could carry? Do you remember making that statement to Mr. Yori?

A. No.

Q. Or any statement similar to that?

A. No.

Q. Do you remember telling Mr. Yori, when he questioned you, or when you told him in regard to the amount of insurance that you hoped to carry on the barn that had burned, do you ever remember mentioning to him that amount of five thousand dollars?

A. No.

Q. Are you quite sure that you never did?

A. Yes, I am very sure.

Q. Do you remember telling him that you and Mr. Hassett could never get together about this insurance on the barn?

A. No.

Q. Without going into the question of the date of the first [44] conversation that you had with Mr. Hassett about the barn insurance, don't you recall that Mr. Hassett specifically asked you at that time if you wanted him to hold the barn covered by insurance before he got out to the ranch and you said no?

A. I don't remember that.

(Testimony of Silvo Questa.)

Q. Did you ever mention any amount of insurance to Mr. Hassett with regard to this barn at any conversation that you had with him about it before the fire, except at the first conversation?

A. The amount of the barn?

Q. The amount of the insurance that you wanted on the barn?

A. The first conversation.

Q. You mentioned it as the first conversation.

A. Yes.

Q. Did you mention it at any of the other conversations?

A. No.

Q. But at each conversation you kept asking Mr. Hassett why he didn't come out there?

A. I asked him to deliver me my policies.

Q. Oh, you asked him to deliver you your policy?

A. Yes.

Q. And you didn't say anything to him then about not coming out to the barn.

A. No, he was to the ranch.

Q. And you were satisfied with that and you didn't expect him to come out again then?

A. No.

Q. Now, as a matter of fact, Mr. Hassett's visit to the ranch took place in your absence and before his bookkeeper came out [45] to collect that check that you put in evidence?

A. Before?

Q. Yes.

A. No, after.

(Testimony of Silvo Questa.)

Q. Mr. Hassett came to the ranch after the book-keeper was out there?

A. That is right.

Q. You are quite sure of that, are you?

A. Yes.

Q. Now I am going to call your attention to the statement that you gave me in January and your answer was—I am just giving the latter part of the answer because the first part relates to another series of questions:

“——so he came down.

Q. Came to your ranch?

A. To the ranch and I had just left for town.

Q. When was that?

A. That was before the 15th of August.”

Do you remember so stating?

A. No, I don't.

Q. You don't remember so stating?

A. It was around, a little after the 15th of August.

Q. Now I am asking you if you remember stating to me in Mr. Boyle's office in January it was a few days before the 15th of August that Mr. Hassett came to the ranch? Do you recall so stating?

A. Well, I don't, but if I stated it, I guess I stated it.

Q. Your testimony now is that it was after the 15th the August, [46] is that right?

A. Yes.

(Testimony of Silvo Questa.)

Q. And then you recall that just after I questioned you about when Mr. Hassett came and you told me it was the 15th of August:

“Q. Now do you remember on August 16th you gave him a check for \$75.00 to apply on your dwelling policy?

A. Yes.

Q. To a young man named Coll?

A. I don't remember the boy's name but he represented himself as bookkeeper for this company.

Q. For Mr. Hassett?

A. That is right.

Q. And he came to the ranch?

A. Yes.

Q. And what conversation did you have with him?

A. I asked him where Frank was. He says he was in town and I says, “He promised to be down here to come and see me but he hasn't come down. Tell him to get down here.” That is all the conversation I had with him.”

Q. Now your testimony is then that that conversation with the bookkeeper took place before and not after Mr. Hassett had visited the ranch?

A. Mr. Hassett, I am sure, visited the ranch after the 15th day of August.

Q. How do you fix that date?

A. How do I fix that date?

(Testimony of Silvo Questa.)

Q. Yes, what makes you sure of it now, that it was after the [47] 15th of August?

A. When I insured the car and I asked him on the street about the car he said he had taken care of it. He had been at the ranch before then when I asked him that, he had already been at the ranch.

Q. And when was that?

A. That was already the middle of August.

Q. Then it may have been before the middle of August that he was there, may it not?

A. No.

Q. What other data can you give us for fixing the date of that visit, other than it was before the time when this automobile insurance was taken care of? I will withdraw the question. As a matter of fact, Mr. Questa, you are not very certain, are you, as to the exact date on which Mr. Hassett came to the ranch?

A. No, I do not know the exact date.

Q. And you are not sure, are you, that it was after instead of before the 15th of August?

A. Well, it was after the 15th of August to my knowledge.

Q. And what makes you think so?

A. I think so.

Q. Now after Mr. Hassett had been to the ranch, you saw him again, didn't you, before the fire?

A. Yes.

Q. And on that occasion did you have any discussions with Mr. Hassett regarding the amount of insurance on this barn?

(Testimony of Silvo Questa.)

A. No, that is when I saw him at the Riverside.
[48]

Q. At the Riverside, but I think you said you saw him about the middle of August, about one P. M., on the street?

A. Yes.

Q. And that was after his visit to the ranch, as you related it this morning, was it not?

A. After his visit to the ranch?

Q. Yes. Well, to refresh your recollection as to what I am driving at—when you told us the story of this matter on direct examination, you spoke of your first conversation with Mr. Hassett. Then you stated he came out to the ranch, then you stated you saw him around the middle of August on the street, and then you stated the last of August you saw him at the Riverside bar, so according to the sequence you gave us this morning, you had two conversations with Mr. Hassett after he had been to the ranch, is that correct?

A. Well, the second conversation I had with Mr. Hassett was on the street and I don't think he had been out to the ranch yet.

Q. Was that conversation before or after you gave that check to Mr. Coll, the bookkeeper, or whatever his name was?

A. That conversation was what?

Q. Was that conversation in the middle of August with Mr. Hassett before or after you gave the check for \$75.00 to Mr. Hassett's bookkeeper?

(Testimony of Silvo Questa.)

A. It must have been right around the next day or so, right in the middle of August, 15th or 16th.

Q. Now you knew, did you not, that Mrs. Questa had no discussion with Mr. Hassett regarding this insurance?

A. No, Mrs. Questa never had any discussion with Mr. Hassett about [49] insurance.

Q. You say she did not?

A. Not that I know of.

Q. She told you, didn't she, that Mr. Hassett had been there?

A. Yes.

Q. And didn't she tell you that he would have to see you, that she didn't know anything about the insurance, didn't she tell you that she had told him that?

A. She told me that he said he would see me in town.

Q. When you saw Mr. Hassett in town before the fire and after he had been to the ranch, did you have any discussion with him as to the amount of the insurance on the barn?

A. I asked Mr. Hassett about delivering my policy about the middle of August and I am quite sure that he had been at the ranch then, in between the 15th, 16th or 17th that I met Mr. Hassett—

The Court: Just a moment—read the question.

(Question read)

Q. I will withdraw the question. You told us this morning that you talked to Mr. Hassett in the

(Testimony of Silvo Questa.)

middle of August and the last of August. Now I asked you which of those conversations took place after he had been at the ranch and you said that only the last one, you only talked to him once after he had been to the ranch, is that right?

A. No, I think I had a conversation on the street with him.

Q. After he had been to the ranch?

A. I don't remember.

Q. Well, at any rate, you do know that conversation at the River- [50] side bar, which was in the latter part of August, took place after he had been at the ranch, you know that, don't you?

A. Yes.

Q. You are quite sure of that?

A. Yes.

Q. Did you have any conversation with him at that time as to the amount of insurance that you were going to take on the barn?

A. At the Riverside bar?

Q. Yes.

A. No.

Q. Well, didn't you say a little while ago, Mr. Questa, that the reason for Mr. Hassett going down to the ranch, and the only reason, was so that he could determine what amount of insurance should be carried? Didn't you tell us that?

A. No.

Q. You didn't? What was the purpose of Mr. Hassett going to the ranch?

A. Well, the purpose was I wanted him to see

(Testimony of Silvo Questa.)

the building and I wanted the barn to carry what it was supposed to carry, \$7500.00.

Q. Didn't you also say you thought perhaps you could get more than that amount of insurance on it and that was why you wanted Mr. Hassett to see it?

A. I didn't say I wanted more.

Q. But you did say that you wanted Mr. Hassett to come down there to determine whether the amount of \$7500.00 was the right amount, in view of the company, isn't that right?

A. Yes.

Q. And yet when you saw Mr. Hassett at the Riverside bar, after [51] he had been there, you had no conversation with him whatever regarding the amount of the policy you were to get?

A. No.

Q. Now isn't it a fact that your conversation at the Riverside bar specifically had to do with Mr. Hassett coming down to the ranch when you were there and seeing you there at the ranch about this insurance?

A. I asked Mr. Hassett about the policy, yes, and he said that he would take care of it and he said that he would come down.

Q. Come down to the ranch, but he had already been there, hadn't he?

A. Yes.

Q. Why would he come?

A. I thought maybe he was going to come down and bring me the policy or visit.

(Testimony of Silvo Questa.)

Q. In other words, his coming down to the ranch did not have anything to do with writing of insurance at all?

A. Not any more, no.

Q. You recall, of course, when you gave the conversation this morning about what took place at the Riverside bar that Mr. Hassett said, "I will take care of it" and "I will come down." Now did you ever mention to Mr. Hassett the reproduction cost of the barn prior to the fire?

A. Before the fire?

Q. Yes.

A. Yes.

Q. When?

A. What was that question? [52]

Q. Before the fire? A. No.

Q. You are quite sure of that, are you?

A. Sure.

Q. Now calling your attention again to the statement that you gave me in Mr. Boyle's office:

"Now what was your conversation with him at that time?"

This refers to the first conversation.

"A. I told him I wanted to insure that barn. You know he has insurance on the new house and I told him I wanted insurance on that barn and he asked me what I thought of the barn. I said, 'Oh, the barn is a huge thing, it cost \$15,000.00 or more to build it to-day'."

(Testimony of Silvo Questa.)

“Q. You told him that?

A. That is right.”

Do you recall so stating to me?

A. No, I don't.

Mr. Levit: Well, counsel, in order to get the record clear, as long as the witness doesn't remember, I will, if necessary, call Mr. Lozano who transcribed these notes, unless you will stipulate that that was correctly made from the transcript and Mr. Questa did so testify.

Mr. Boyle: I have no doubt that he testified as Mr. Lozano wrote it. I have no doubt it was testified to.

Mr. Levit: Will that be a stipulation?

Mr. Boyle: I will stipulate he so stated, yes.

Mr. Levit: I think that will be all for now. [53]

The Court: We will take our noon recess at this time.

(Recess taken at 12 o'clock.)

Afternoon Session—June 23, 1942

1:50 P. M.

The Court: Court will come to order. We will proceed.

Mr. Questa resumed the witness stand.

Redirect Examination

By Mr. Boyle:

Q. Mr. Questa, you were more or less confused

(Testimony of Silvo Questa.)

on one or two questions there. How many times did Mr. Hassett come to the ranch? A. Once.

Q. Do you remember when he came to the ranch? A. After the 15th of August.

Q. When you say after the 15th of August, how long after would it be?

A. Well, about a week.

Q. Now with relation to any conversation that you had with Mr. Hassett about the cost of reconstructing a barn of that kind in case of a fire, do you remember having such a conversation?

A. I made a mistake on that one. I talked about that with Mr. Hassett somewhere some place but I don't remember where.

Q. You don't know whether it was on the 15th or after then? A. It must have been after.

Q. It must have been after the fire but you don't recollect now that it was before the fire. Now what would be, in your opinion, the value of that barn at the time of the destruction by fire, taking into consideration depreciation, etc.? [54]

A. \$15,000.00.

Mr. Levit: I make the same objection and the same motion as this morning.

Q. How long have you been in the ranching business? A. Practically all my life.

Q. How old are you?

A. Forty-seven years old.

Q. How many ranches have you lived and worked on?

(Testimony of Silvo Questa.)

A. I have owned three ranches in three different places, all in this part.

Q. And you were raised as a boy in this valley?

A. That is right.

Q. Are you more or less familiar with working around barns? A. Yes.

Q. And also structures of all kinds on ranches?

A. Yes.

Q. And during that time you studied ranching, did you know it in all its various kinds?

A. Yes sir.

Q. And you consider that you are a rancher at the present time, knowing all the ramifications thereof? A. Yes sir.

Q. Did you ever study the value of barns?

A. Yes, I have had buildings built and know what they cost; buying pieces of timber that run into money right now.

Q. With a barn on a ranch does it or not depreciate with age?

A. Well, if it is kept up the depreciation on it doesn't bother so much. [55]

Q. This barn had more or less been repaired fundamentally a short time before, had it not?

A. Yes.

Q. With all those things in view, what would be your estimation of the value of that property as a barn at the time it was burned?

A. You mean the value?

Q. Well, what would you say was the value, yes?

A. The value on it would be \$8,000.00.

(Testimony of Silvo Questa.)

Q. Now with relation to the ranch on which you live at the present time and all the property thereon, including the barn, who owned that property before you owned it? A. The Yori estate.

Q. Who owned it before that?

A. Derby, I believe.

Q. When you say the Yori estate, where does your wife's mother come in, if she does, in that particular matter?

A. My wife is a daughter.

Q. But what particular interest did your wife's mother have in that property before you people went on it? A. She owned it.

Q. Now in relation to insurance, if any were carried on that ranch or the property, the buildings, by whom was it carried, if you know and through whom, if you know? A. Mrs. Yori.

Q. Up to what time was it carried by Mrs. Yori, to your knowledge?

A. I think I took it over in 1932 and there was a policy on there yet for three years.

Q. In other words, that would run to 1935, is that it? [56] A. Yes.

Q. By whom was that policy or insurance paid, if you know? A. I don't know.

Q. Was any of the business ever handled through the banks here?

A. Yes, First National.

Q. Was that because of a loan that was on the ranch? A. I believe so.

(Testimony of Silvo Questa.)

Q. Do you know who had the loan?

A. On the ranch?

Q. Yes, did you have it or did somebody else have it? A. I don't understand.

Q. I am trying to get at the idea of paying insurance, if any were paid. You were not very clear on the payment of insurance. If you didn't pay it, did somebody else pay it?

A. Mrs. Yori paid it.

Q. Do you know what company she paid it in?

A. No, I do not.

Q. You know as a matter of fact it was paid, however? A. Yes.

Q. Do you know whether she paid it or whether the bank paid it? A. I don't know.

Q. Do you know when the last insurance expired on the ranch property, do you remember?

A. I think it was around 1935.

Q. And was it insured after '35 by you?

A. No.

Q. And do you know the reason why?

A. Yes. [57]

Mr. Levit: Just a minute—I withdraw the objection.

Q. Do you know the reason why?

A. Yes.

Q. What was the reason?

A. The depression.

Q. In other words, you did not have the money to pay for it? A. That is right.

(Testimony of Silvo Questa.)

Q. Now with relation to the contents of the barn, was there anything in that barn at the time the barn burned down that was insured? A. Yes.

Q. By whom?

A. There was some hay in the barn.

Q. How much?

A. I had over 900 bales in one corner that was supposed to have been sold and wasn't paid for, didn't take it.

Q. Who was the party?

A. Monaei Lindley Cupit.

Q. That was the former wife of Gordon Rice?

A. That is right.

Q. Was she Mrs. Rice at the time?

A. No, Cupit. She had 12 tons left out of 70 some tons in the barn.

Q. Do you know whether or not and with whom it was insured?

A. Parish. Howard Parish was there with some other fellow insuring the hay.

Q. It was not in this same company then was it, or was it? Do you know? [58]

A. This company?

Q. Yes, do you know whether it was or not?

A. No, it must have been Parish.

Q. Some other company? A. Yes.

Q. Now with reference to a matter that is not very clear. On redirect I desire to ask you when was the first time that you spoke to Mr. Hassett, the insurance agent, about the insurance on the barn?

(Testimony of Silvo Questa.)

Mr. Levit: That has been asked and answered several times.

Mr. Boyle: If it is understood, it is all right.

The Court: It has been asked and answered a number of times, but I will permit it.

A. August 1st.

Q. Do you remember where?

A. On Virginia Street.

Q. Reno? A. Reno, yes.

Q. Did you speak to him about it thereafter?

A. In his office.

Q. And then you testified he came down to the ranch? A. Yes.

Q. Did he speak to any one on the ranch?

A. My wife.

Mr. Boyle: You may cross-examine.

Recross Examination

By Mr. Levit:

Q. How much was the barn insured for under this other policy [59] that you spoke about?

A. I don't know what insurance they were carrying. Mrs. Yori was carrying the insurance on that.

Q. You said it was in force for three years after you took the property over. Didn't you know how much insurance you had?

A. I never had the policy, never seen the policy.

Q. Didn't you ever inquire? A. No.

Q. You don't recall, then, with reference to this other insurance that Mr. Yori told you that he had

(Testimony of Silvo Questa.)

been taking care of the premium on it for some time but that he couldn't continue to carry it indefinitely and asked you to pay it? You don't recall that? A. No.

Q. You don't recall if he said if you couldn't carry it you had better cancel it? A. No.

Mr. Boyle: If this is cross-examination, I think it is entirely improper, your Honor, because I do not remember any testimony of that kind, but if it is for impeachment, I will withdraw my objection.

Mr. Levit: I am merely questioning about the transaction he brought out on direct.

The Court: I wasn't impressed that the question was not reasonably proper. I will permit it.

Q. Now, Mr. Questa, how much do you think, in your opinion, a barn of the type of this barn depreciates per year?

A. Well, I haven't any idea, I couldn't say. [60]

Q. Well, your figure of \$8,000.00, did you take depreciation into consideration in fixing that figure?

A. I believe it should have been insured for 50 per cent.

Q. Fifty per cent of what?

A. Fifteen thousand.

Q. That was your testimony as to what the replacement cost was, is that right? A. Yes.

Q. In other words, you figured there was a depreciation of 50 per cent?

A. No, I didn't mean it that way.

Q. Will you explain what you did mean then in fixing that \$8,000.00 premium?

(Testimony of Silvo Questa.)

A. Well, I figured \$8,000.00 would have been the right amount of insurance, \$7500.00 to \$8,000.00, for the barn.

Q. Well now what did you consider the value of the barn to be at the time of the fire?

A. Fifteen thousand dollars.

Q. In other words, the figure of \$8,000.00 that you gave was merely the amount of insurance that you think it would have been proper to carry?

A. Yes, \$7500.00 to \$8,000.00.

Q. But your testimony as to the value of the barn at the time of the fire was \$15,000.00?

A. I must have misunderstood the question.

Q. Well, how is it now?

A. Well, the barn was valued at \$15,000.00.

Q. By you, is that right? [61]

A. Yes.

Q. That was your idea of its value as it stood on the day of the fire? A. That is right.

Q. And what was the figure of \$8,000.00 that you mentioned?

A. For insurance, \$7500.00 to \$8,000.00.

Q. In other words, that was all the insurance on it that you wanted to carry?

A. That is right.

Q. In other words, you were figuring on insuring it for about 50 per cent of what you considered its value to be? A. That is right.

Mr. Levit: I think that is all, your Honor, except I would like to renew my motion in regard to the testimony.

The Court: We will take those motions up at the time of argument. I suggest that you bring out something concerning the size of the barn.

Mr. Boyle: I was going to bring that out, your Honor, I have a witness purposely for that.

The Court: All right.

MRS. QUESTA,

being first duly sworn, testified as follows:

Direct Examination

By Mr. Boyle:

Q. What is your name please?

A. Jennie Questa.

Q. Where do you reside?

A. R. F. D. No. 2, Box 102, Reno, Nevada.

Q. Are you a citizen of Nevada? [62]

A. Yes.

Q. You have lived here all your life, have you not? A. Yes.

Q. You have reared your family here?

A. Yes.

Q. Mrs. Qesta, how long have you known Mr. Hassett?

A. I have known him about three or four years.

Q. When did you first meet him?

A. I have met him up town and then met him when he came down to the ranch.

Q. Did or did not a fire occur on the ranch?

A. Yes.

(Testimony of Mrs. Jennie Questa.)

Q. What did that fire do, if you recollect?

A. Destroyed a barn.

Q. How long before that occasion did you see Mr. Hassett, before it burned down?

A. Well, he came down, I imagine it was about, it was around August some time, the latter part of August.

Q. That would be 1941? A. Yes.

Q. Do you know at that time what his mission was, if you know? A. Yes.

Q. What was it? A. The insurance.

Q. Did you see him at that time?

A. Yes.

Q. You saw him, did you not?

A. Yes, I did. [63]

Q. Did you speak with him at that time?

A. Yes.

Q. Do you know, of your own knowledge, what he did? A. Yes.

Q. What did he do?

A. He drove in and came into the house and then he went out and stood in front of his car and looked all over the buildings, facing the barn, he was standing right in front of it.

Q. Kindly tell the court how far approximately, in feet? A. I don't know as I could.

Q. Well, we will say approximate it with the building across the street, was it that far?

A. Oh, further than that. About 90 yards, something like that. I don't know if it is that far.

(Testimony of Mrs. Jennie Questa.)

Q. Did you see him walk around the buildings?

A. Well, he stood out in front of the car and just looked around.

Q. Did he go into the house at any time?

A. After he stood outside for a while then I asked him in the house and he went all thru the house, looked at every room in the house and everything in the house.

Mr. Levit: Which house was that?

A. That was the new house. And then he went out and stood in front of his car and I stood out with him and he was still looking around and I said, "Anything I can do for you? Mr. Questa isn't here." He said, "No, I will see him up town."

Q. Now do you know whether or not he went into the barn and through the barn?

A. No, he didn't go in the barn. [64]

Q. Did he go any other place?

A. No, just outside there.

Q. Did he go in a place called the stone house?

A. No, he didn't go there.

Q. Do you know whether or not he insured the stone house?

A. Well, I thought it was insured.

Q. Well, did he go into the stone house?

A. He walked around from here to the building.

Q. But you didn't see him go into it?

A. And he drove around there with the car when he left.

Q. What did he drive around?

(Testimony of Mrs. Jennie Questa.)

A. He had a car.

Q. Did he drive around the barn?

A. Up past the barn.

Q. Then how far would he be from the barn.

A. Very close, about from here to the building.

Q. And in going out he had to pass that close to it?

A. Well, I didn't see him go out.

The Court: When you say "This building over there", you mean the State Building?

A. Well, it wasn't that far.

Q. Then in approximate feet?

A. Not that far.

Q. Well, would it be half the distance?

A. Yes, about half the distance.

Q. That would be only about 75 feet then.

A. Yes, about that.

Q. Now with regard to a certain check that was offered in evi- [65] dence today, I would like to ask you if you have seen that before and if that is your signature?

A. That is my signature.

Q. And do you know whom you gave that to?

A. I do not know his name. He said he was from the Milwaukee Insurance Company.

Q. Do you know whether or not he was representing Mr. Hassett?

A. Yes, he said Mr. Hassett sent him down.

Q. Did you give him that check?

A. I said, "How much do you want? Do you want it all?" He said, "No, give what you want." I said, "How much do you want?" He said make it \$75.00. You can pay the rest after."

(Testimony of Mrs. Jennie Questa.)

Q. How long was it between the time the home was insured and the time you gave him the check?

A. The insurance policy was brought there in August.

Q. When was it insured, if you recollect?

A. Well, I can't think when it was insured.

Q. This bears the date—it is in evidence—of March 25, 1941.

A. Well, this policy wasn't delivered to me until August.

Q. That would be March, April, May, June, July, August, five months?

A. Five months.

Q. Now do you know why that wasn't delivered to you for five months? A. No, I do not.

Q. You didn't make any objections to it?

A. No, I thought, you know—well, I tell you what happened. Young Junior Yori came down. He said, "I've been carrying this around in my pocket" and a few days after his bookkeeper came [66] down to collect.

Q. Do you know how long Yori had it in his pocket? A. No.

Q. Did you give young Yori instructions to get it? A. No.

Q. It wasn't made out to him, was it?

A. No.

Q. When you paid the check of \$75.00 five months after, was that in complete payment for it?

A. No, it wasn't complete. There was a balance.

(Testimony of Mrs. Jennie Questa.)

Q. Do you know how much the balance was?

A. I can't say exactly. It might show from the policy, but I can't say exactly. It was a hundred something.

Q. And then did you pay that later?

A. Yes.

Q. And do you remember when that was paid?

A. No, I don't. Mr. Questa paid that.

Q. You wouldn't know whether it was a month or how long after? A. No, I don't.

Q. And the barn, the size of the barn, are you familiar with the size of the barn?

A. Oh yes, I have been in it nearly every day.

Q. What would you say the dimensions of the barn were?

A. I don't know. It was a huge barn really, a large barn.

Q. Was it not known as the largest barn in the Meadows?

Mr. Levit: Objected to.

The Court: I will permit it, subject to the objection.

Q. Now with reference to the property itself, the ranch, etc., by [67] whom was it owned before you owned it? A. Mrs. Maria Yori.

Q. Was that your mother? A. Yes.

Q. And then you came in after Mrs. Yori died, was that it? A. Yes.

Q. How long after your mother died did you go there? A. I have been there all the time.

(Testimony of Mrs. Jennie Questa.)

Q. Even before your mother died?

A. Yes.

Q. Were you raised there?

A. Well, almost.

Q. How many years have you lived there since Mrs. Yori died?

A. Well, I have been there almost all my lifetime.

Q. I mean since? A. All the time.

Q. Let us get the time that your mother died, about what year? A. 1933, I think.

Q. Prior to 1933, to your own knowledge, was the barn insured?

A. Yes, my mother carried an insurance.

Q. Do you know with whom?

A. I knew it was thru the bank.

Q. When you say thru the bank, you mean the First National Bank?

A. First National Bank.

Q. That followed the Reno National Bank?

A. Yes.

Q. And the First National Bank, do you know why they carried it, do you know of your own knowledge? Was it because of mortgage or [68] something?

A. There was no mortgage.

Q. Then they were the insurance agents, was that the idea?

A. I really couldn't say. I don't know who was insurance agent for the bank. Mother took care

(Testimony of Mrs. Jennie Questa.)

of that and I didn't pay any attention. I know it was insured.

Q. And your husband testified to the effect it was insured up to 1935?

A. Yes, because I knew after he took over the ranch it was still insured.

Q. Do you remember when the insurance lapsed at that time?

A. No, I don't know exactly when, but I know it did.

Q. Do you know the reason?

A. Well, on account we didn't have the money.

Mr. Boyle: You may cross-examine.

Cross-Examination

By Mr. Levit:

Q. When do you first remember this ranch, Mrs. Questa? A. First remember this ranch?

Q. Yes, how far back does your memory go?

A. Well, I can say about forty years.

Q. Were you living on it at that time?

A. Yes.

Q. Your mother owned it then since about 1902?

A. Well, no, my father was still living then.

Q. Do you know when your mother or father acquired the property?

A. I can't remember the date.

Q. But you think about forty years ago?

A. Just about. [69]

(Testimony of Mrs. Jennie Questa.)

Q. And the barn was there at that time, wasn't it?
A. Yes.

Q. You don't know how long it had been there at that time?

A. It was almost a brand new barn when we moved there.

Q. Do you recall when it was built?

A. No, I do not.

Q. How old are you, Mrs. Questa?

A. Forty-five.

Q. Then you think your recollection is good to go back to when you were five years old and you can remember the barn was new at that time?

A. Well, you can always remember something from a child.

Q. Your impression is it was new?

A. It was a good barn, yes.

Q. I am merely speaking of the age of it.

A. Yes.

Q. Who owned the property before your father had it?
A. Derby.

Q. Do you know if Mr. Derby built the barn?

A. I couldn't say.

Q. Mrs. Yori is your sister then?
A. No.

Q. What is the relationship there?

A. Just Mrs. Yori.

Q. Are you related to Mr. Yori?

A. Mark Yori?

Q. Yes.
A. He is a brother of mine. [70]

Q. At the time Mr. Hassett was out there you

(Testimony of Mrs. Jennie Questa.)

fix it the latter part of August, how do you fix that date, Mrs. Questa?

A. Because he came down there after I had taken the check to the company, then Mr. Hassett drove down there.

Q. You are quite sure it wasn't before?

A. No, it wasn't, it was after the 15th. It was about a week after.

Q. You recall, don't you, that you were present during the time that your husband was examined in Mr. Boyle's office in January?

A. Yes, I was there.

Q. You know you gave some testimony at that time too? A. Yes.

Q. And you remember your husband saying at that time that the time that Mr. Hassett had come to the ranch was before August 15th?

A. I don't remember his saying that.

Q. You had no conversation at all with Mr. Hassett regarding insurance, did you, when he was out there?

A. Not when he was out there.

Q. Did you talk to him about insurance?

A. No, I wanted to know what I could do. Mr. Questa wasn't there. I asked him if there was something I could do. He said no, he would see Mr. Questa in town.

Q. So you did have no conversation about insurance?

A. No, but I know what he was there for.

(Testimony of Mrs. Jennie Questa.)

Q. But I want to make it perfectly clear that so far as conversation between you, the word insurance wasn't mentioned?

A. I didn't mention insurance. [71]

Q. And the barn wasn't mentioned?

A. No. We probably mentioned the barn.

Q. And he didn't mention anything about the barn or insurance then?

A. No, but I knew what he was coming down for.

Q. Well, you assumed that?

A. Yes, I knew. Mr. Questa told me he was coming.

Mr. Levit: That is all.

Mr. Boyle: That is all.

MR. S. L. WILLIAMS,

a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Boyle:

Q. What is your name please?

A. S. L. Williams.

Q. Where do you reside? A. Sparks.

Q. Nevada? A. Yes.

Q. How long have you lived in Nevada?

A. About 39 years.

Q. What is your business or occupation?

(Testimony of S. L. Williams.)

A. Building contractor.

Q. How long have you been a building contractor? A. About 32 years.

Q. While you were a building contractor in Nevada, what buildings, if any, did you build and how many, if you know?

A. Oh, I couldn't tell you how many exactly. Built an awful lot; average about 27 to 28 houses a year in Sparks for 10 or 12 years [72] at one stretch.

Q. Have you built any large buildings?

A. Oh, not really large buildings. I built the Catholic Church in Sparks, built the Reno Furniture Store in Reno, built the Davis Hotel in Sparks.

Q. You built the Baptist Church?

A. Rebuilt the Baptist Church, built the First Christian Church and built the new Telephone building in Sparks.

Q. Then you have had more than the average experience as a builder in all classes of building construction, have you not? A. I think so.

Q. And you know the values of building construction? A. I feel so.

Q. And you also know whether work is good, faulty, or otherwise? A. Yes.

Q. You also know whether extraordinary timbers are placed in the building or ordinary?

A. Yes sir.

Q. Did you or did you not ever see a building

(Testimony of S. L. Williams.)

known as the barn on the Glendale Ranch of the Questas?

A. Yes, I rebuilt a stone house that is there. There had been a fire at some time and I put a new roof on it and new floor and windows and doors and built a porch on it; quite a lot of work. I don't remember exactly—it was about five years ago—and it wasn't far from the barn.

Q. How far was it?

A. I should say somewhere around 100 yards, 300 feet.

Q. Did you ever go into the barn and inspect it and look around it? [73]

A. Well, I didn't go thru it and inspect it, but I was in there. I went down once or twice to get something and couldn't help but notice the construction because it was out of the ordinary.

Q. When you say "out of the ordinary", kindly explain to the court how much out of the ordinary.

A. Most barns built nowadays are what you call balloon, light timber; these were heavy.

Q. When you say heavy timbers as compared with ordinary timbers, what were the size of the timbers in this barn, as compared with ones of balloon construction today?

A. Well, most of them the biggest are 4 x 6 posts and 6 x 6 outside and these posts were about 10 x 10.

Q. And when you say 10 x 10, would that increase the durability of the barn, as to age?

(Testimony of S. L. Williams.)

A. Oh, I think it would.

Q. Then if a barn were built of 10 x 10 construction, how long would it last as compared to one built of four by six, or six by six?

A. I wouldn't know how to estimate that. Make it a lot stronger in case of wind, snow, or anything like that.

Q. Then if a building of that kind were recently reconstructed, or if a building of that kind with the timbers you have mentioned, with new piers put under them, these piers being about one and a half feet thick or one foot thick and five feet square, what effect would that have upon the structure of the barn as to the durability?

A. It would make it last a lot longer.

Q. It would restore it almost as good as any modern barn, would [74] it not?

A. I think so.

Q. I show you some drawings and ask you if you have ever seen them before?

A. Yes, I did them.

Q. When you saw the barn at that time you were working down there, what was the condition of the outer structure, the columns, the elevation?

A. You mean the condition of it?

Q. Yes.

A. Well, it all looked good to me, except the roof shingles looked a little old.

Q. Do you know whether or not it was leaking?

A. No, I do not.

(Testimony of S. L. Williams.)

Q. What would be your estimate of the cost to reshingle that roof with new shingles of a goodly type?

A. I think I figured about 83,000 shingles.

Q. And what would the cost be to put the whole thing on, labor and all material?

A. Shingles are selling at \$8.00 a thousand and it would cost about \$3.50 a thousand labor putting them on and about 15 cents a thousand for nails.

Q. It would be a thousand dollars approximately?

A. I could figure it up in a minute.

Q. I will figure it up. What is that amount?

A. Eight dollars a thousand for the shingles.

Q. How many thousand?

A. Eighty-three thousand. [75]

Q. That is \$664.00. Now the labor per thousand?

A. It has been running a little over \$3.00 a thousand.

Q. Make it \$4.00.

A. Well, \$3.25.

Q. That would be \$270.00, and that would include nails?

A. No, the nails would be about two pounds to the thousand, about 160 pounds at seven cents a pound.

Q. That would be \$11.62. The total according to that——

A. Wait, and something has to be added for unemployment tax and industrial insurance.

Q. Well make it \$100.00.

(Testimony of S. L. Williams.)

A. And the contractor has to have a profit, something for his work, about 10 per cent.

Q. That would be another \$100. That would be \$1195. That is your estimate of what it would cost?

A. About what it would cost.

Q. When you were in the building do you recollect whether or not there was anything, such as extraordinary irons or braces or angles or lag screws that might have been put in the building?

A. Well, I didn't pay so much attention to that but before I drew this plan I went down there and hunted up the old braces that go over the hay loft and they were under the rods and of course there were angle washers under part of the rods, ordinary washers under straight rods and on top. I went down on the river bank and found a part of the old braces, so as to find out because I didn't know exactly what they were.

Q. Would you or not say they were of extraordinary strength?

A. Well, that is about the average. I have built a lot of [76] buildings and worked a lot of braces and that is about average of that kind of brace. If anything, it is a little heavier than the ordinary.

Q. Would you or not say a building of that construction, using the fabric you have mentioned, extraordinary size timbers, with irons and rods, would it or not stand the elements very easily in the State of Nevada?

A. Oh yes.

(Testimony of S. L. Williams.)

Q. Could you not say if it really became necessary to put an outside to the building, if the outside had really worn out, by putting on the outside and new roof it would be as good as new?

Mr. Levit: Objected to as calling for conclusion.

The Court: I will permit the question.

A. What was that question again?

(Question read.)

A. Well, I don't think it would be as good as new, because pine lumber, even in the dry, after years is not as strong as when new.

Q. Considering the extraordinary size of the timbers, would it not be as good as a new building of today?

Mr. Levit: Objected to as leading and calls for conclusion.

Mr. Boyle: He is testifying as an expert.

The Court: On that theory, I will permit the question.

(Question read.)

A. It would be as good as a new building of lighter construction.

Q. Now, Mr. Williams, will you kindly tell the court the size of that building, as to dimensions, height, etc., by looking at [77] your drawing.

A. One hundred twelve feet six inches long and 47 feet wide. Now when I drew this I went down there and took the measurements with a steel tape-line and I don't think it would vary more than a

(Testimony of S. L. Williams.)

few inches. But now the height of the building, I have to kind of go from memory and I asked Mr. Questa how high it was. I have the height up to the base 28 feet from the top of the concrete piers and the peak of the roof is 24 feet above that. That makes the peak of the roof about 53 feet.

Q. To replace that particular building, did you ever give that any consideration?

A. Well, that is why I figured it. I figured the lumber as near as I could all the way through, nails, hardware, estimated the labor.

Q. Did you figure out the entire amount of lumber that you believe it would take to reconstruct that? A. Yes.

Q. I show you a certain paper and ask if you have ever seen that before? A. Yes.

Q. And did you make notes at the time you checked up as to the quantities it would require for reconstruction of that barn, and also the labor it would take and other costs to put it back in the condition it was prior to the time of the fire?

A. Yes, I figured it all out.

Q. Will you kindly tell the court what you believe would be the amount of lumber it would take and also as to the value. If the court desires just the value, if you will stipulate we would like—[78]

Mr. Levit: We have no objection to your offering it in evidence as an exhibit.

Q. What is the total amount there?

(Testimony of S. L. Williams.)

A. \$14,235.30.

Q. This would be your estimate of the amount?

A. Yes.

Q. And all timbers, etc. We offer this in evidence as Plaintiffs' Exhibit "E".

The Court: It may be admitted.

Mr. Levit: By stipulating it doesn't mean that we agree; it means we have no objection.

Mr. Boyle: This is his estimate as to what he believes it would cost to replace it.

Mr. Levit: That is right.

Mr. Boyle: We offer these drawings; first sectional elevation and front elevation.

A. This is the front elevation and this is cross-section.

Q. The other would be the side elevation, is that so? A. West side.

Q. And the other would be the foundation plan?

A. Foundation.

Q. And the other would be the braces?

A. Well, that I intended for the hay loft. These braces are over the hay loft.

Mr. Boyle: Your Honor, we would like to offer this in evidence.

The Court: It may be admitted.

Clerk: Plaintiffs' E. [79]

EXHIBIT E

S. L. Williams, Contractor

233 Thirteenth St.

Sparks, Nevada

Phone 602.

SPECIFICATION FOR BARN FOR
SILVO QUESTA—GLENDALE ROAD

All material used in the construction of barn shall be # pine such as sills posts, beams, braces, studding, cords, joists, plates, rafters, boxing and battens.

All roof sheathing to be # 3 & 4 sheathing spaced.

All shingles shall be # 1 5/2 cedar, laid with 4" exposure.

Material to be used as follows:

Sills 10 x 12, posts 10 x 10, plates 10 x 10, rafters and collar beams 2 x 6 angle braces 6 x 8 and 6 x 6, nail girts 4 x 6.

T&G plank floor to be laid on first floor and hay loft floor.

Girders 10 x 10, 3 x 8 first floor joists set 16" on centers, hay loft floor joists to be 2 x 12 set 16" on centers.

Box stalls to be built as follows: 6 x 6 posts boxed with 2" plank.

Exterior boxing to be 1 x 12 and 1 x 4 battens, sheathing on roof shall be 1 x 6 or 1 x 8 spaced not over 2 1/2" apart.

There shall be eight trusses over hay loft, as shown on plan, as follows:

10 x 12 lower cord, 10 x 12 end braces, 10 x 10

(Testimony of S. L. Williams.)

top cord and all other braces shall be 8 x 8, all framed as shown on drawings.

All rods used in trusses shall be 1 inch rods with iron plates at top and bottom.

All doors and windows to be as shown on plan.

I figure the cost as followa:

35 cu. yds. concrete in place.....	\$ 350.00
130000 boaed feet lumber and timbers.....	5,850.00
Doors and windows	250.00
83000 cedar shingles	664.00
Truss rods and bolts.....	350.00
Nails, hinges, locks &c.....	150.00
Carpenter labor, including shingling.....	4843.00
S.S. and unemployment tax and industrial insurance	484.30
Contractors labor and profit.....	1294.00

I will provide all material and to complete

the barn for the sum of.....\$ 14235.30

S. L. WILLIAMS,

Contractor.

[Endorsed]: Filed June 23, 1942.

Q. Mr. Williams, you note on the piers that form the foundation for the uprights the 10 x 10, as you have written here, would that mean they are ten inches square? A. Yes.

Q. Was each column 10 inches square?

A. Ten inches square post.

(Testimony of S. L. Williams.)

Q. And you have testified that the ordinary barn of today is built of 6 x 6?

A. Well, not many of them over 6 x 6.

Q. In noting the piers, did you dig down and check up beneath?

A. No, I measured the floor and figured it should be at least three feet thick.

Q. And then the piers on top would be 2 x 9?

A. Two by 9; some a little over and some less.

Q. Then if you were to build, you would build on top of those piers, is that the idea?

A. Well, I figured on the piers and all all new.

Q. Then when you figured the reconstruction of the barn in that particular matter that you gave to the court, then you figured that being all torn out and new and that would be part of the cost?

A. Yes.

Q. I see. Then there was no salvage. You may cross-examine.

Cross-Examination

By Mr. Levit:

Q. These concrete piers were still there, were they not? A. Yes.

Q. Weren't they perfectly usable in the reconstruction of the buildings? [80]

A. Well, in rebuilding the building, I don't think I would want to use them.

Q. Why not?

A. Well the piers—say that is the pier and post stood here. They went down into the piers like

(Testimony of S. L. Williams.)

that. I would rather put the piers in and the posts on top.

Q. Did the fire damage the piers?

A. Oh, I don't know as it damaged it any.

Q. In other words, you just thought you could build the building a little better than it was built before the fire?

A. Well, I like to have the foundation strong, solid.

Q. How much concrete would it take for these various piers that you were talking about?

A. I think I figured them 40 piers, 35 a yard, as near as I remember. I have it on that list there.

Q. Thirty-five cubic yards of concrete?

A. Yes.

Q. That is just for the piers? A. Yes.

Q. Three hundred fifty yards. What would have been the advantage of constructing the piers the way your estimate calls for over the way they were constructed?

A. Well, it is always better, I think, where a wood post sets on concrete to have it on top and some sort of water proofing to keep moisture from following up the piers, that was my idea.

Q. Then so far as concrete piers are concerned, your estimate calls for what would be, in your opinion, a better building than the barn that burned, is that right? [81]

A. Well, that part of it might be.

Q. Where did you get your information con-

(Testimony of S. L. Williams.)

cerning details of construction in this building? Did you take that from your visit five years before, or did you get the details from Mr. Questa?

A. Well, as I said, I looked in there and saw the construction. It was so much out of the ordinary I remembered how it was, but before I drew the plan I went down there and measured up everything and went down along the river bank and saw the braces and all together figured out what part of the building they were and so far as uprights, there were part of them sticking in the concrete yet, that is, places you could see a hole in the concrete where they had been setting.

Q. Did you get any information from Mr. Questa concerning details of the interior construction?

A. No, not more than the height. I wasn't sure about the height and we talked about that. I went down there and measured everything up before he got there.

Q. How much of the cost that you have estimated here is attributable to the stalls?

A. Well, I couldn't tell you off hand.

Q. Well, I don't want you to tell me off hand, but can you tell me? A. No.

Q. Didn't you make any figures on it?

A. Sure I figured it and then lumped it all together. I don't remember how many feet were in the stalls.

Q. Where did you get your information from

(Testimony of S. L. Williams.)

to determine how much lumber you would need to build the stalls? [82]

A. Well, I figured out as near as I could remember how they were built.

Q. Five years before? A. Yes.

Q. Well, how many feet would you say were there?

A. Well, I can't tell you now, wouldn't attempt to.

Q. Have you any figures on it?

A. Well, I can measure it up.

Q. How about the floor of the barn?

A. As I understood—that is one thing I wasn't sure about, but it looked to me like two inch floor, what they call decking.

Q. You mean that you would remember from five years before how it had looked and had a two-inch floor? A. Yes.

Q. What other items do you change in making your construction estimate besides the concrete piers?

A. Oh, I don't know as I made any other change.

Q. Well, can't you give us any breakdown on the approximate percentage of your figures that would have gone into say the stalls and the floor of the barn?

A. No, I couldn't without looking it up.

Q. Was it ten per cent of the total cost?

A. Well, I wouldn't say.

Q. You can't give us any idea at all?

(Testimony of S. L. Williams.)

A. Because I don't remember and I won't guess it.

Q. So if it developed in the evidence that this barn, at the time of the fire, had no stalls and had no floor, you wouldn't know how to adjust those figures in order to arrive at—— [83]

A. So far as the floor, it would be easy, but the stalls are different.

Q. Well, how about the floor?

A. Well, the floor would be the square surface multiplied by two, two-inch stuff.

Q. In other words, you take that from your board feet, is that the idea? A. Yes.

Q. So the total area of that barn was approximately 5200 or 5300 feet, something like that?

A. Forty-seven by 112-6.

Q. Would be about 5,264 feet, wouldn't it? Do you want to check that?

The Court: Well, that can be checked. That is a matter of multiplication.

Q. 5,264 feet?

A. Well, it would be some place around there.

Q. Multiply that then by two and that would give you 10,500 feet roughly?

A. Then you have to add a fifth for matching. You have about 5½ inches for 6-inch board.

Q. So would you add that fifth before you doubled it or after you doubled it?

A. Well, I think after you doubled it.

Q. So that would be 10,500 plus another 2,100, is that right? A. Roughly speaking, yes.

(Testimony of S. L. Williams.)

Q. That would be 12,600 feet?

A. Yes. [84]

Q. And then if you took the percentage of that number of feet to the total number of board feet and then took that same percentage of your total cost, that would be approximately the difference, wouldn't it?

A. Well, it would be hardly a clear break because the higher up you put up a building—I mean, a second floor will cost more for labor than the first floor, nearly 50 per cent more.

Q. I am only trying to get you to tell us; I don't want to confuse you.

A. I understand, but work on the ground, labor doesn't cost as much as it does above the ground.

Q. Well, very roughly it would come to around 10 per cent on the figures that I have given you so far, wouldn't it?

A. Well, I don't know if I have that straight, just exactly what you mean. Would you say it again?

Q. Well, I think you said that in order to determine what proportion of the cost, you said it would be a little easier to determine the proportionate cost of the floor?

A. Yes.

Q. And you said take the number of square feet, multiply by two, add 20 per cent?

A. One fifth.

Q. Yes, 20 per cent, and that would give you the total lineal footage attributable to the floor?

A. Yes.

(Testimony of S. L. Williams.)

Q. And that was, as we figured it, about 12,600, or roughly ten per cent of your 130,000 total lineal feet, is that right?

A. It wouldn't be far off. [85]

Q. And you can't tell us how you figure the stalls or what percentage of the cost went into the stalls at all?

A. Well, of course, I figured them. I took the measurements from the plans here as I remember.

Q. From what plan?

A. From this plan I drew.

Q. Do you have the stalls showing on the plan?

A. No, I didn't have time to show them.

Q. Well, would you say that the stalls would cost as much as the floor or less than the floor?

A. Well, it wouldn't cost as much as the floor.

Q. Well, what percentage of the cost would you say of the floor would be attributable to the stalls?

A. Well, it would be a lot of guess work. It would take time to figure out.

Q. You wouldn't be prepared to give an estimate now?

A. No, I wouldn't like to, no.

The Court: When you use the expression "stall", does that mean the ordinary stalls for horses?

A. As near as I remember those stalls were box stalls, like they used to have forty years ago.

Q. You say box stalls, built with 6 x 6 posts, boxes with two inch planks? A. Yes.

Q. You must have calculated how much was stalls and how much plank?

(Testimony of S. L. Williams.)

A. I don't remember how many.

Q. Well, what about the floor of the hay loft when you saw [86] this barn five years before?

A. Well, I wasn't up in there at all.

Q. Did you look at it from the bottom?

A. Oh well, I really looked at it but I didn't pay any particular attention, no more than I sized it up. It was two-inch flooring, tongue-grooved.

Q. Is that the best type of construction of floor that you would use in a structure of this kind?

A. I think so.

Q. Are you sure you did not use that type of construction because it was the best and most expensive, rather than because you remember the floor, the kind of floor?

A. Well, I don't know as it would be much more expensive. If you use one inch floor it would have to be doubled, or should be. Take the same amount of lumber.

Q. How much would you say, Mr. Williams, it would cost to build a barn of this size in the type of modern construction that you spoke about?

A. Oh well, that would be a guess.

Q. Haven't you ever built any barns?

A. Yes.

Q. You have built the modern type?

A. I have not built any barns lately.

Q. Have you ever built a barn like this, with 10 x 10 timbers?

A. Oh, I have worked on buildings in my younger days like that.

(Testimony of S. L. Williams.)

Q. When did you build your last barn?

A. Oh gosh, I don't know.

Q. Where was it? [87]

A. The last barn that I remember working on was in California forty years ago, 1902.

Q. And you have not built a barn since then?

A. Oh, I have built small barns.

Q. When you say small barns, do you mean of the type of 6 x 6 construction you were talking about?

A. Most of them were 4 x 4.

Q. Have you repaired any barns in the last 40 years?

A. No, I have not.

Q. Then on what do you base your statement that if this particular barn had a new outside and a new roof on it, it would be just as good as a barn of modern type construction, a new barn?

A. Well, if it was built of heavy timbers and was strong, well braced.

Q. Well you are overlooking, are you not, the condition of the timbers and whether they had rotted?

A. Well, of course, I do not know whether they were rotted or not. I shouldn't think they were, though.

Q. You are also overlooking, are you not, the condition of the flooring, shall I say the flooring and hayloft?

A. Well——

Q. You did not take that into consideration in your answer, did you?

A. I do not know as flooring in the hayloft should deteriorate so fast.

(Testimony of S. L. Williams.)

Q. Are you prepared to tell us, taking an ordinary barn of modern type of construction; that is, lighter construction you have spoken about, what is the approximate square foot cost of construction of that type of barn? [88]

A. Oh, I never figure that way. I figure out lumber to build and labor and hardware.

Q. You haven't any knowledge of the square foot cost of that type of building?

A. It would be just a guess.

Q. What would your guess be, your best estimate?

A. I don't like to guess. As a rule I don't guess on jobs.

Q. You did quite a bit of guessing, didn't you, in preparing this estimate that you just put in evidence, Mr. Williams?

A. Well, not so very much. Some things, I said a while ago, I had to guess at.

Q. I would like to have you make another guess and tell us the approximate square foot cost of construction of the kind you describe, lighter type, and also in which you tell us would be just as good or about the same in value as this barn with a new roof and sides.

A. What do you mean, square foot?

Q. Isn't there a rule of thumb that contractors use, Mr. Williams, so that if you are building certain type of residence you can tell approximately what the square foot cost should run?

(Testimony of S. L. Williams.)

A. That is so in residences. It is still only a guess.

Q. But there is a rule of thumb contractors use pretty much to check figures and give estimates before they make a deal?

A. Some figure that way.

Q. It would be a lot easier to apply such a rule to a structure like a barn than to a residence, wouldn't it?

A. Oh, I don't think so. [89]

Q. You think a barn is more individualistic than a residence?

A. Well, if you take your walls on a barn of this size, I mean the walls around, and take a building half that big, you can see that you wouldn't be very near right if you took it on a square foot basis.

Q. I don't quite follow that.

A. I don't know as I can make it plain, but now the distance around that building, I mean the distance around it——

Q. Pretty close to 300 feet, isn't it?

A. Would be about 319 feet. Now a building, say half that big, or say 20 feet wide by 112 feet long, you see that would be 265 feet; 265 running feet of wall that you would have to build around that, and the other you would have only 319 feet in double the amount of building floor space.

Q. I can understand that.

A. That is why I say it is all a guess when you come to figuring by square feet of a building.

Q. All right, I do not care whether you figure

(Testimony of S. L. Williams.)

by square feet or how, but I would like to know what it would cost to build a barn of this area constructed as a modern barn would be constructed and as you have described?

A. Well, I don't like to guess at it because I can't tell you off-hand the cost.

Q. What would be the cost, let us say, of the timbers, as compared with the cost of timbers in this?

A. Well, take the posts, 10 x 10, that would be 8-1/3 feet, board feet each running foot.

Q. And if it was only 6 x 6? [90]

A. Thirty-six, would be three feet.

Q. Less than half, in other words?

A. Yes.

Q. In other words, your lumber cost would you say would be cut half if you were building of the usual type of construction?

A. Well, so far as the posts, sills, and a lot of that stuff, would be less than half, but so far as braces is concerned, they should be that big.

Q. The braces? A. Yes.

Q. Would there be metal braces in a building of that type? A. Wooden braces.

Q. The braces would be the same, in other words?

A. That would be my idea they should be.

Q. How much would it cost to build, in your opinion, a building new outside, similar to this building?

A. You mean just the siding?

(Testimony of S. L. Williams.)

Q. Just the walls, with the windows and sills and doors, etc.?

A. Not the frame work, you don't mean the posts or braces?

Q. I don't know; I am just going back to the testimony you gave a little while ago, when you testified if new sides and new roof were put on this building, it would be just as good as a new building of lighter construction.

A. I understood you meant just the siding, boxing we call it, not the frame work, that is what you meant, wasn't it?

Q. I didn't ask you that question, Mr. Boyle did.

A. I could make an estimate of that in a couple of minutes.

Q. All right, I wish you would. What was the condition of the [91] paint at the time you saw it five years ago?

A. Well, as near as I remember, it didn't look like it had been painted for some time.

Q. When you say for some time, what do you mean?

A. I should say over five years, but then I wouldn't know.

Q. In other words, the condition of the paint wasn't very good? A. No, it wasn't.

Q. And the same thing is true of the roof?

A. Well, as I said, the shingles I could see, they were curled.

Q. In short, the barn needed a new roof?

A. Well, it needed new shingles.

(Testimony of S. L. Williams.)

Mr. Levit: Now I am going to have to ask, your Honor, that the witness give us an estimation of the amount of this price that belongs into the stalls, because we will see that there were no stalls in the building, and I think that unless the witness is able to segregate the figure that he used for the stalls from his other figure, there would be no way of the court or counsel having any idea of what his estimate is on the cost of reconstruction, so that if we could take a recess now, I would like to have the witness try and give us an estimate on the cost of new sides and new roof and of the portion of this that went into making of the walls.

A. Well, I don't know as I can on the stalls. I could look it up, however, and give it to you tomorrow, if that would be satisfactory.

The Court: Well, we will take a recess at this time for ten minutes.

(Recess taken at 3:00 o'clock.) [92]

3:10 P.M.

MR. WILLIAMS

resumed the witness stand on further cross-examination by Mr. Levit.

Q. Now, Mr. Williams, are you prepared to give us an estimate on the cost of building the outside and walls of this building?

A. Not the outside wall, the siding or boxing, just the outside of the building.

(Testimony of S. L. Williams.)

Q. What did you figure that would be?

A. Well, I figured that would be about \$1254.00.

Q. Did that include the windows and doors?

A. No, that is just the one by twelves.

Q. How much would the windows and doors add?

A. Well, I don't know. If you want somewhere near the cost of that stuff, I should have a little time to figure it out.

Q. Now in addition to the cost of the floor, there was the question of the floor joists involved also, wasn't there?

A. Yes, there would be floor joists.

Mr. Levit: Now, counsel, will it be stipulated that the floor and the floor joists and the stalls have been removed from this building prior to this fire?

Mr. Boyle: Is that so, Mr. Questa, that the floor, floor joists and stalls had been removed?

Mr. Questa: Yes.

Mr. Boyle: Then how many stalls, if any, were in there?

Mr. Levit: Just a moment.

Mr. Boyle: I won't stipulate unless I can tell you definitely how many were in at the time of the fire.

Mr. Questa: At the time of the fire there were no stalls [93] in the barn.

Mr. Boyle: No floor or floor joists?

Mr. Questa: No.

Mr. Boyle: We will stipulate.

Mr. Levit: All right, and now, may it please the

(Testimony of S. L. Williams.)

Court, we at this time move to strike the testimony of this witness and the Exhibits "B" and "E", on the ground that the testimony of the witness has demonstrated that he had no proper foundation for attempting to arrive at his estimate and that the estimate he arrived at is not in accordance, or is based upon facts not in accordance, with the physical conditions of this building. The witness testified that five years before he had been employed on the property and he admits that he had no contact with the barn, except that he had been in it and casually looked at it, that he got no further information concerning the details of the interior construction after the fire from Mr. Questa, except the dimensions, that is, the actual height dimensions, so that it would appear that all that the witness knew positively about this barn was its approximate size and he saw some of the barn timbers afterward. The fact he did not know its condition is conclusively demonstrated by the fact that he has admittedly a figure of over ten per cent in there that doesn't belong there at all. Now we submit that this testimony, if offered as expert testimony, has had no proper foundation laid and that it is not entitled to any weight whatever, and we ask that it be stricken.

The Court: I think we will take that under consideration later. I am impressed it goes to the weight of the testimony; unless it would be shown [94] that all of these deductions made would bring

(Testimony of S. L. Williams.)

it below the amount alleged that the insurance was for.

Mr. Levit: Our position is simply that the only purpose of this testimony is to establish the reconstruction cost of the barn and that either it establishes the reconstruction cost of the barn as it stood prior to the fire, or it does not. Of course, if his testimony establishes reconstruction costs but with some adjustments would be different than the final figure expressed, that would go to the weight of the testimony, but our point is that the basis upon which these estimates were made is so far away and uncertain, admittedly, and based upon a casual observation largely of five years before, with no further information obtained after the fire except what he might be able to pick up in the way of burned timbers in a completely destroyed barn, that it wouldn't be admissible at all.

The Court: I prefer to consider all these matters after the transcript of testimony and briefs and arguments later.

Mr. Levit: Very well.

Q. Are you prepared to state, Mr. Williams, what, in your opinion, the amount of depreciation on a barn of this type would be per year?

A. Oh, I hardly think I could.

Q. You know it would depreciate, do you not?

A. Oh certainly it would depreciate.

Q. Well, are you prepared to say how much it would depreciate?

(Testimony of S. L. Williams.)

A. Well, no, I do not know that I could. Some buildings depre- [95] ciate one per cent a year. I have figured jobs where they took off three per cent per year.

Q. You never tried to get an FHA loan on the basis of one per cent depreciation, did you?

A. No.

Q. You know you couldn't get it, don't you?

Mr. Boyle: Objected to.

Re-Direct Examination

By Mr. Boyle:

Q. Mr. Williams, could you estimate the amount of the value of the joists, flooring, and the stalls, and then deduct that from the total amount of your estimate if it were included therein at the present time? A. Yes, I could tonight.

Q. Will you do that tonight? A. Yes.

Q. And record it tomorrow and have the matter presented to the court? A. Yes.

Mr. Boyle: That is all. Your Honor, according to our pleadings, we have alleged a certain letter, of the firm of Long & Levit, representing the Milwaukee Mechanics' Insurance Company, denying the fact it had any liability and this was alleged in my complaint, so I offer this letter in evidence.

Mr. Levit: It is attached to my answer. No objection.

Clerk: Plaintiffs' Exhibit "F".

PLAINTIFFS' EXHIBIT "F"

Percy V. Long Bert W. Levit William H. Levit

Law Offices
LONG & LEVIT
Merchants Exchange
San Francisco

February 20, 1942

William S. Boyle, Esq.,
Attorney at Law,
Gazette Building,
Reno, Nevada

Re: File #1552 - Silvo
 Questa, Reno, Nevada;
 Fire Loss.

Dear Mr. Boyle:

Please be advised that our client Milwaukee Mechanics' Insurance Company denies that it is under any liability whatever to your clients Silvo Questa and Jennie Questa, or to either of them, for loss by fire to their barn occurring on or about September 21, 1941. Said Insurance Company expressly denies the existence of any contract of insurance, written or oral, between it and your clients or either of them, at the time of said fire or at any other time.

Yours very truly,

LONG & LEVIT

BWL:MC.

[Endorsed]: Filed June 23, 1942.

Mr. Boyle: I also have proof of loss and you state in your letter you have admitted that such a proof of loss is filed.

Mr. Levit: In our answer. We make no point of that, [96] your Honor. I do not think it is in issue in the case at all. We object to the introduction in evidence because it simply clutters up the record. We admit a document purporting to be proof of loss is filed and raise no findings on it and I think it is not in issue in the case.

The Court: I suggest that it be filed, subject to the objection. We will rule on that later.

Clerk: Plaintiffs' "G" for identification.

Mr. Boyle: It is only an exhibit then for identification?

Clerk: Yes.

Mr. Boyle: Your Honor, at this time, as I am about to rest my case, I might offer it in evidence.

The Court: You are offering it in evidence, but we will reserve ruling.

Mr. Levit: I will withdraw my objections.

The Court: Then it may be admitted.

Mr. Boyle: We rest, your Honor.

Mr. Levit: I have the originals; suppose you withdraw those copies and I will give you both originals and amended proof of loss and you can file them.

Mr. Boyle: Then this being the case, we offer two of these and you have two that were duplicate copies.

Clerk: The two will be marked "G", "Proof of Loss" and "Amended Proof of Loss."

PLAINTIFFS' EXHIBIT G

PROOF OF LOSS

State of Nevada,
County of Washoe.—ss.

Silvo Questa, being first sworn says: That Silvo Questa and Jennie Questa were the owners of a large barn situated on the Glendale Ranch in Washoe County, Nevada; That during the first part of August, 1941 Frank Hassett as agent for the Milwaukee Mechanic's Insurance Company entered into an agreement for and in consideration of the premiums to be paid for insuring an automobile and a home and a large barn on the said Glendale Ranch; That it was agreed that the barn was to be insured for the sum of Seven Thousand Five Hundred Dollars (\$7,500.00); That Frank Hassett as agent for The Milwaukee Mechanic's Insurance Company was to deliver a policy to Silvo Questa and Jennie Questa and the said Frank Hassett was to collect the insurance premiums; That Frank Hassett did not deliver the said insurance policy as agreed upon and the barn burned down on or about September 20, 1941 and was completely destroyed; That Silvo Questa has heretofore notified the said insurance company of the loss of fire of the barn aforesaid. That this affidavit is in the form of a written notice and proof of loss by fire of a barn insured by the Milwaukee Mechanic's Insurance Company, situated on the Glendale Ranch the

property of Silvo and Jennie Questa; That the said barn is a total loss.

Dated: January 8, 1942.

SILVO QUESTA

Subscribed and sworn to before me this 8th day of January, 1942.

WILLIAM S. BOYLE,
Notary Public, Washoe
County, Nevada.

AMENDED PROOF OF LOSS

State of Nevada,
County of Washoe.—ss.

Silvo Questa, being first sworn says: That Silvo Questa and Jennie Questa were the owners of a large barn situated on the Glendale Ranch in Washoe County, Nevada; That during the first part of August, 1941 Frank Hassett as agent for the Milwaukee Mechanic's Insurance Company entered into an agreement for and in consideration of the premiums to be paid for insuring an automobile and a home and a large barn on the said Glendale Ranch; That it was agreed that the barn was to be insured for the sum of Seven Thousand Five Hundred Dollars (\$7,500.00); That Frank Hassett as agent for The Milwaukee Mechanic's Insurance Company was to deliver a policy to Silvo Questa and Jennie Questa and the said Frank Hassett was to collect the insurance premiums; That Frank Hassett did not deliver the said insurance policy as

agreed upon and the barn burned down on or about midnight September 21st, 1941 at 12:10 A. M. and was completely destroyed; that there was an incumbrance of Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-six Cents (\$16,666.66) on the ranch; that there was no other insurance thereon; that the origin of the fire is unknown; That Silvo Questa has heretofore notified the said insurance company of the loss of fire of the barn aforesaid, namely on September 26, 1941 and again demanded the policy of insurance. That this affidavit is in the form of a written notice and proof of loss by fire of a barn insured by the Milwaukee Mechanic's Insurance Company, situated on the Glendale Ranch the property of Silvo and Jennie Questa; That the said barn is a total loss; That no insurance policy was delivered to the insured to this date; that there was no change in the title, use, occupation or exposure of the barn since, 1940.

Dated Jan. 19, 1942.

SILVO QUESTA

Subscribed and sworn to before me this 19th day of January, 1942.

WILLIAM S. BOYLE,

Notary Public,

Washoe County, Nevada.

[Endorsed]: Filed June 23, 1942.

Mr. Levit: You rest?

Mr. Boyle: We rest, yes.

Mr. Levit: Now Mr. Boyle, the original proof of loss [97] was sent to Mr. Hassett accompanied by this letter of yours, is that not correct?

Mr. Boyle: Yes.

Mr. Levit: We offer Mr. Boyle's letter in evidence and ask it be marked Defendant's Exhibit 1.

Clerk: Exhibit 1.

DEFENDANT'S EXHIBIT No. 1

William S. Boyle
Attorney at Law
202-3-4 Gazette Building
Reno, Nevada
Phone 5592

January

8th

1 9 4 2

Frank Hassett, Esq.

Agent

The Milwaukee Mechanic's Insurance Co.

Reno, Nevada

Dear Mr. Hassett:

I am enclosing a proof of loss in affidavit form for a large barn situated on the Glendale Ranch, Washoe County, Nevada, the property of Silvo and Jennie Questa which was destroyed by fire on or about September 20, 1941.

Very truly yours,

WILLIAM S. BOYLE

WSB:jm

[Endorsed]: Filed June 23, 1942.

Mr. Levit: Now, Mr. Boyle, do you have Mr. Hassett's letter to you of January 13, 1942?

Mr. Boyle: Yes.

Mr. Levit: May I have that please. We offer in evidence letter of January 13th from Frank Hassett, Inc., to Mr. Wm. S. Boyle. Now I may say, your Honor, that the letters are both very short. Mr. Boyle's letter, Exhibit 1, merely encloses, in affidavit form, a proof of loss for a large barn situated, etc., which was destroyed by fire on September 20th, and in reply to that letter Mr. Hassett wrote Mr. Boyle: "Dear Mr. Boyle: On my return from Las Vegas this morning, I find your letter of January 8 relative to Mr. Silvo Questa. We are returning proof of loss, as this company had no coverage on the barn." That was January 13th.

The Court: It may be admitted.

Clerk: Defendant's 2.

DEFENDANT'S EXHIBIT No. 2

Commercial Casualty Insurance Company
Organized 1909
Loyalty Group

Pacific Department
220 Bush Street, San Francisco, Cal.

John R. Cooney, Chairman of Board
Howe S. Landers, President
Wm. B. Rearden, Executive Vice-President
W. W. Potter, Vice-President
Fred W. Sullivan, Vice-President
F. E. Chadwick, 2nd Vice-President
R. W. Walbey, Secretary
A. A. Milhaupt, Secretary

Frank Hassett, Inc.
General Insurance Agency
150 North Virginia Street
P. O. Box 2419
Reno, Nevada

January 13, 1942

Mr. William S. Boyle
202 Gazette Building
Reno, Nevada

Dear Mr. Boyle:

On my return from Las Vegas this morning I find your letter of January 8 relative to Mr. Silvo Questa.

We are returning the proof of loss as this office had no coverage on the barn.

Yours very truly,

FRANK HASSETT, INC.

FRANK HASSETT

FH:lp

Enclosure

[Endorsed]: Filed June 23, 1942.

Mr. Levit: Now we offer in evidence original non-waiver agreement dated January 26, 1942, signed by Silvo Questa and Jennie Questa, and I think counsel will stipulate that the signatures are the signatures of the plaintiffs.

Mr. Boyle: The intent of that was merely, when you took the deposition, you had been permitted——

[98]

Mr. Levit: I think the document will speak for itself. We will offer it in evidence and then we would like to read it to the Court.

Mr. Boyle: All right, you read it, and I will explain it.

Clerk: Defendant's 3.

Mr. Levit: (Reads)

DEFENDANT'S EXHIBIT No. 3

“NON-WAIVER AGREEMENT”

“This Agreement entered into at Reno, Nevada, on this 26th day of January, 1942, by and

between Silvo Questa and Jennie Questa (first parties) and Milwaukee Mechanics' Insurance Company (second party),

Witnesseth:

“Whereas, first parties have served upon second party a document entitled Amended Proof of Loss, making claim on second party for loss by fire to a certain barn under an alleged agreement to insure the same, said fire being stated therein to have occurred on or about midnight September 21, 1941; and

“Whereas, second party has not and does not admit the issuance of any insurance upon said barn or the making or entering into by it or on its behalf of any agreement to insure the same or to issue a policy of insurance upon the same; and

“Whereas, it is to the mutual advantage of all parties hereto to permit second party to investigate all the facts and circumstances concerning the alleged agreement to insure, the alleged fire and claim, and to ascertain the value of the said barn and the loss and damage, if any, thereto, without delay;

“Now Therefore It Is Hereby Agreed by and between the parties hereto as follows:

“1. Second party shall be free (but not obligated) to investigate and make any inquiry it may see fit, and to take such steps as it may

be advised, with respect to any of the matters aforesaid.

“2. First parties agree to furnish to second party all information within their ability to furnish and to submit to examination under oath, with [99] respect to the foregoing matters.

“3. Anything done or to be done in connection with any of the matters aforesaid shall not constitute an admission of the existence of any agreement to insure the said property or of the existence of any insurance upon the said property, or of any liability whatever on the part of second party for the alleged loss or damage to said property; nor shall second party thereby be deemed or held to have waived, invalidated, forfeited or modified any legal rights available to it should it be ultimately determined that insurance of said barn by second party in fact exists.

“In Witness Whereof, * * * ”

etc. That will be stipulated, Mr. Boyle, will it not, in order to avoid recalling Mr. Questa, that that agreement was signed by them in your office and in your presence?

Mr. Boyle: It was. We will so stipulate that it was signed by them in my presence in my office.

MR. HASSETT,

a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit:

Q. Will you state your name please?

A. Frank Hassett.

Q. Where do you live?

A. 480 Granite Street, Reno.

Q. What business are you in?

A. General agent for the Milwaukee Mechanics' Insurance Company.

Q. Where is your office?

A. 150 No. Virginia Street, Room 2.

Q. What name do you operate under?

A. Frank Hassett, Inc.

Q. You are acquainted with Silvo Questa, one of the plaintiffs in this case, are you not? [100]

A. Very well.

Q. Do you remember, beginning back about March of 1941, you wrote a policy on his new dwelling on the ranch?

A. Yes.

Q. How did you come to write that policy?

A. Well it seems to me I received a telephone call from my good friend Mark Yori and he was at the Pioneer Hotel and he told me Silvo wanted to get some insurance on his house.

Mr. Boyle: Objected to as hearsay.

Mr. Levit: Never mind the conversation.

(Testimony of Frank Hassett.)

The Court: There may be a question in respect to that. As this is a trial before the Court, we will consider all those things later. I am inclined to think the conversation——

Mr. Boyle: We will withdraw the objection.

Q. Go on then, state what Mr. Yori said to you about the policy on the house.

A. He told me Silvo was building a beautiful new home at the ranch and certainly should have some insurance and Silvo agreed he should, so I told him I would be very happy to insure it for whatever amount he designated and we agreed upon an amount of \$6500.00 and I was to go out to the ranch.

Q. Now this conversation you speak of was a conversation with Mr. Yori?

A. Yes.

Q. Was Mr. Yori an agent of the Milwaukee Mechanics'?

A. No sir.

Q. Was his son an agent? [101]

A. Yes sir.

Q. But actually all of the details of your insurance business with the Yori family, or most of it, was handled through Mr. Yori, Sr., was it?

A. Not exactly, but we discussed insurance together.

Q. Did you issue a cover note on this house policy?

A. We did issue a cover note.

(Testimony of Frank Hassett.)

Q. And that was in amount of \$6500.00?

Mr. Boyle: Objected to as not the best evidence.

Q. Do you have the note?

A. No, I might have a copy of it.

Q. Let us have the copy then. Will you have any objection to using a copy?

Mr. Boyle: None whatever.

Q. This is your office copy of cover note issued on the dwelling house policy, is that correct?

A. Correct.

Q. That was written up by you on March 25, 1941?

A. Yes.

Q. What did you do with it?

A. We mailed it to our agent, as is customary.

Mr. Boyle: We want to get that right. We wouldn't object to a copy, however, in this particular instance my clients did not receive the original. If this is done for the purpose of evading that particular note——

Mr. Levit: Not at all. We do not know what Mr. Yori, Jr. did with it. Maybe he mailed it, maybe he carried it around in his pocket. [102]

Mr. Boyle: Is it made out to Mr. Questa? We maintain he didn't get it or any one authorized to receive it for him.

Mr. Levit: Mr. Yori telephoned in for the insurance account presumably on behalf of Mr. Questa. We have already in evidence the policy, or presumably the policy, that subsequently was issued

(Testimony of Frank Hassett.)

pursuant to his order, was accepted by Mr. Questa, because he produced it and said it was his policy, so it is a fair inference Mr. Yori was acting for Mr. Questa in the issuance of this policy. I do not know whether this note was ever turned over, or the original, to Mr. Questa or not. We do wish to prove that it was made out when the order was given, the note was made out and was sent in the usual channel to Mr. Yori's son, who was the legal agent for the Milwaukee Mechanics' Insurance Company. What Mr. Yori did with it, I do not know and we do not care.

The Court: Let me suggest in all these matters it is a trial before the court and not a jury. Cover the actual facts, what they were, and the legal phases we will consider later.

Mr. Levit: The only point is that counsel's objection is well taken if it is going to be on the ground this is a copy, and we will then be forced to subpoena Mr. Mark Yori, Jr., and find out what became of the original cover note, but if counsel is going to object on that point, we can go ahead and not worry about the other phase.

Mr. Boyle: We do not say what he says is not a fact; however, we do maintain he did not get a copy of the cover note.

Mr. Levit: We offer it in evidence and ask it be [103] marked defendant's exhibit next in order.

Clerk: Defendant's 4.

(Testimony of Frank Hassett.)

DEFENDANT'S EXHIBIT No. 4

Pacific Department
60 Sansome Street
San Francisco

Telephone Kearny 4725 - Covering Note No. 27455

Firemen's Insurance Co. of Newark, N. J.	\$
Girard Fire & Marine Ins. Co.	\$
Mechanics Insurance Co. of Philadelphia	\$
National-Ben Franklin Fire Insurance Co.	\$
Superior Fire Insurance Co.	\$
Concordia Fire Insurance Co.	\$
Wisconsin Underwriters	\$
Pittsburgh Underwriters	\$
Milwaukee Mechanics Insurance Com- pany	\$ 6,500.00

Total - \$ 6,500.00

.....Insurance against loss or damage by fire is hereby kept covered in the above named Company and for the amount given above, subject to the printed conditions of the Standard Fire Insurance Policy of the State, Territory or Province in which the risk hereby insured is located, or, (if there be no Standard Form of Fire Insurance Policy pre-

(Testimony of Frank Hassett.)

scribed by the law of such State, Territory or Province) the printed conditions of the present Standard Fire Insurance Policy of the State of New York, shall be deemed to be a part of this cover note, except as hereinafter provided, as follows:

In favor of Jennie Questa and Silvo Questa
Loss, if any, payable to Named assured
On Class "D" Dwelling

Situate Questa Ranch about 4½ miles southeast of
City Limits of Reno, Washoe County, Nevada.
From March 25, 1941, at noon, A. M., P. M.
To cease May 25, 1941, at noon, or such time prior
thereto as the Company's policy may be issued on
above described risk in lieu hereof.

Dated March 25, 1941.

Broker Frank Hassett, Inc., M. L. Yori, Jr.
Reinsured Co. retains net \$.....
Insurance Map
Sheet.....
Block.....
No.....

W. W. & E. G. POTTER,
Managers
By

[Endorsed]: Filed June 23, 1942.

(Testimony of Frank Hassett.)

Q. You mailed the original of Defendant's Exhibit 4, which was an exact duplicate of it, to Mr. Yori, Jr., on or about March 25, 1941?

A. Correct.

Q. Now prior to that time had you ever written any insurance for Mr. Questa?

A. No sir.

Q. Did you subsequently go out to look at the house on Mr. Questa's property that was described in that cover note?

A. Yes sir.

Q. When was that?

A. Oh, probably 30 days later.

Q. Up to that time the policy had not been written, and when I say the policy, I mean Plaintiff's Exhibit——

A. I can give you the exact date; it is probably on this policy.

Mr. Levit: Let the record show I handed the witness Plaintiffs' Exhibit "C", and I will ask you if that was the policy finally issued to take up or to continue or to replace the cover note just introduced in evidence?

A. It replaced that cover note.

Q. When was that policy issued?

A. This policy was issued the 16th day of April.

Q. And it was dated back so far as coverage was concerned, to March 25th?

A. Correct; always made retroactive to the attaching date of the binder. [104]

(Testimony of Frank Hassett.)

Q. When did you go out to Mr. Questa's ranch to look at his house, Mr. Hassett?

A. It would be April 16th, 17th, 18th, or 19th. About around four days behind in writing policies at different times and this policy was written on the 16th day of April.

Q. You do not mean then that you were out there after the policy was written; you were out there before, weren't you?

Mr. Boyle: Objected to. This is direct examination.

Mr. Levit: I am sorry.

Q. The policy was written on what date?

A. On the 16th day of April.

Q. And when, to your best recollection, did you visit the ranch to look at the house?

A. Probably 15th, 14th, or 13th.

Q. Now, Mr. Hassett, did you see Silvo Questa on the ranch when you went out there that day?

A. Yes, he was working very hard, laying pipe, putting in a pump; had two or three employees working. Didn't have very much time to talk.

Q. Did you have any discussion with him at that time about the insurance on this new house?

A. Yes, I told him definitely, "We will hold a cover for \$6500.00." He said, "Frank, that isn't enough." I said, "I agree with you, you should have considerably more. You have a beautiful home." He said, "Well, it is not even finished yet." I said, "That is right, but for the work you

(Testimony of Frank Hassett.)

have put in on it, you should have far more than \$6500.00." We discussed it and finally arrived at \$7,000.00. Then I wrote the insurance for \$7,000.00. [105]

Q. Did you state to him whether or not on that occasion you had issued a cover note on the house?

A. I merely told him we were holding it covered for \$6500.00.

Q. Now did you have any talk with him on that occasion about his other buildings on the ranch?

A. Well, as long as he said I didn't, I would rather agree with him because I can't remember that far back.

Q. You don't recall whether you did or not?

A. No.

Q. When did you first discuss with Mr. Questa the matter of insurance on this barn?

A. Well, it was about the middle of June. I could almost hit the date.

Q. Well, give it to us as close as you can. How do you fix the date?

A. We write insurance on the State Line Country Club and their policy expired for the fire insurance on the State Line Country Club on May 21st and we pick up the renewal and I should say it would be but a week or so after we had written the renewal policy for them that I was in the Riverside bar one evening and Bert Redick told me he had no idea of the value of the contents of the State Line Club, so I asked him——

(Testimony of Frank Hassett.)

Mr. Boyle: Objected to as incompetent, irrelevant and immaterial; no issue of this case.

Mr. Levit: We are not offering it to prove the truth of any matters—merely intend this to show how he fixed the date in which he had his first conversation with Mr. Questa. The subject matter of the conversation about the State Line Country [106] Club is itself irrelevant to any issue in the case, but it does help to fix the date and that is what the witness is testifying.

The Court: He need not go into the conversation which he had on that date to fix the date.

Q. That was about when?

A. The middle of June.

Q. 1941? A. Correct.

Q. And did you see Mr. Questa on that occasion when you were in the Riverside bar?

A. I did.

Q. Tell us what took place in there.

A. I was in there to see Bert Redick in order to secure a note to take to the watchman of the State Line Club to get in there, because they were not open—I believe they opened last year around the 25th of June or a few days before—so I stopped in and picked up this note as agreed, in order to have the watchman let me go in the property and make an inventory of the contents of the State Line Club. As I walked in the bar Silvo was standing there, so I talked to him a couple of minutes. He said, “Frank, I want you to come out to my ranch and write insurance on that old barn.”

(Testimony of Frank Hassett.)

I said, "Silvo, it will be a pleasure to write all your insurance." He said, "All right, come out." I said, "I am going up to the State Line Club now." I believe I told him the reason. I said, "Excuse me a minute." I had to go in the office and get the note from Bert Redick. I came back and discussed it a few more minutes and told him I was going up to the State Line Club then and possibly wouldn't be back until tomorrow or maybe I [107] would stay there over the week end. I said, "I will not be back for a day or two." I said, "Silvo, do you want me to hold it covered for you until I come out to the ranch?" He said, "No, wait until you come out and see it."

Q. Was there any other discussion on that occasion as to any amount of insurance that Mr. Questa wanted? A. No.

Q. Was any amount mentioned at all?

A. No sir.

Q. By either of you? A. No sir.

Q. Was anything mentioned about rates?

A. No sir.

Q. Have you given us to the best of your recollection the entire conversation on that occasion?

A. Yes sir.

Q. When did you next see Mr. Questa and discuss this insurance with him?

A. Well, two or three weeks, somewhere in there, a little later on Virginia Street I saw Silvo.

Q. Had you been out to the ranch?

(Testimony of Frank Hassett.)

A. Not yet.

Q. Did you have any conversation with Mr. Questa?

A. Yes, he asked when in hell I was coming out to the ranch.

Q. And what did you say?

A. I told him I was sorry, I had been too busy, tried to cover too much territory in the State of Nevada and just couldn't get out but would be out in the next day or two. [108]

Q. Was anything said on that occasion about value of the barn or amount of insurance?

A. No.

Q. Was anything said about rates?

A. No.

Q. Was anything said on that occasion as to whether Mr. Questa wanted you to keep the barn covered? A. No, I didn't ask him.

Q. Now what happened next in connection with this barn insurance?

A. Well, I finally got out to the ranch.

Q. How long was it after this last conversation?

A. Well, I don't know, but it was approximately around the 10th—either the first or second week of July, definitely.

Q. How do you fix that date?

A. By realizing that I met Silvo about the 27th of July in the Club 116. I was going in there for an early dinner about 5:30 or quarter to six.

Q. Just a moment, we will come to that later.

(Testimony of Frank Hassett.)

I want to get these in order. You went out to the ranch then a few days or a couple of weeks prior to July 25th or 26th? A. That is right.

Q. What happened when you went out to ranch?

A. Just exactly the same as Mrs. Questa said.

Q. Will you tell us please in your own words?

A. Well, I went out there with the idea of seeing the barn that we discussed the insurance on and Silvo wasn't home so Mrs. Questa very graciously showed me all thru their beautiful home and I commented on the beautiful place. [109]

Q. That was the new home you had already insured?

A. That is right. So she told me I just missed him about 10 or 15 minutes, as I recall, and she wasn't sure whether he would be back in about an hour or probably late in the afternoon. I said, "All right, I will see him down town."

Q. Was anything said on that occasion between you and Mrs. Questa as to insurance?

A. Well, she said—it seems to me I told her I came out to talk to Silvo about insurance on the barn. She replied, "I know you did, Mr. Hassett, but I don't have anything to do with that; Silvo takes care of that, so you will have to see him."

Q. What about this meeting that took place at Club 116, about July 26th?

A. I think it was July 27th. We received an order, telephone call, from Brown Motors, one of our insurance agents, on the 25th of July to write

(Testimony of Frank Hassett.)

public liability and property damage on a station wagon that had just been bought by Silvo Questa, so we placed the insurance and we wrote the policy and so we always, as general agents, mail the policies direct to the agents who give us the orders, so naturally we, in the course of business, got the policy out and mailed it down to Brown Motors to be delivered to Questa. Then about two days later I was walking in Club 116, going back to the dining room to have dinner, and Silvo was standing in front and he called me and he bawled me out, in a very nice, gentlemanly manner, "Frank, when in hell are you going to come out to the ranch and insure the barn?" I said, "Silvo, I should have been there about two weeks, I know that, but I couldn't get there." I said, "Silvo, I am trying to [110] do too much, I should have gone out the next day." Silvo said, "Will you come out tomorrow or the next day?" I said, "I will do my best." I said, "Silvo—" I don't know whether now he asked me first or I told him about it first, but we started to talk about his new station wagon at the same time. I said, "We got a call from Brown Motors to insure for public liability and property damage, what about fire and theft?" and Silvo got hold of me and said, "Didn't you get that?" I said, "No, I didn't." He said, "Believe me, I thought that you got it because I told Brown Motors to give you all the insurance," and about two days later we got a call from Mr. Michaels, giving us the fire, theft, and

(Testimony of Frank Hassett.)

collision and telling us that he meant to heretofore, so we dated that policy back to the 25th.

Q. Was anything said at Club 116 July 27th with regard to the amount of insurance Mr. Questa wanted on the barn? A. No.

Q. Was anything said at that time with regard to any insurance—insurance on the barn at that time?

A. I didn't get that.

(Question read.)

A. Oh no, we didn't talk about that. I told him I would merely come out to the ranch as quick as possible, possibly the next day or within the next two weeks, but he didn't make any mention of the barn.

Q. When was it, if you know, that the book-keeper from your office went out to the ranch to collect the premium on the new dwelling house policy?

A. Well, that apparently would be the date of that check, August [111] something.

Q. Well, the record will show the check was dated August 16th. Is that according to your recollection? A. I imagine it is.

Q. And that check for \$75.00 was on account on premium of \$175.00?

A. \$189.00 I believe was the premium, \$175.00 for the fire and \$14.00 for the extended coverage endorsement.

Q. In other words, the premium you stated, the type of policy—

(Testimony of Frank Hassett.)

A. \$175.00 and \$14.00 which is premium for the extended period.

Q. Now did you see Mr. Questa again after the 27th day of July and prior to the fire?

A. Not that I recall.

Q. At any time prior to the fire was any amount mentioned between you and Mr. Questa as to the amount of insurance that was to be carried on the barn? A. No.

Q. Was any amount mentioned as regards the amount of premium or rate?

A. No, he never inquired the rate; in fact, he never asked me the rate for anything, just placed the insurance and we wrote the policy.

Q. Now, Mr. Hassett, you didn't, I take it, get out to the ranch prior to the fire?

A. I got out there once and Silvo wasn't there.

Q. I mean after July 27th?

A. No. It wasn't July 27th I was out there.

Q. I know it wasn't, but I mean you didn't go out after July 27th? A. No. [112]

Q. Did you at any time, prior to the fire, write out any covering note or memorandum of insurance with regard to this barn?

A. No, I did not, but since that time and after getting better acquainted with the way the people talk, I think maybe I should have made a mental memorandum.

Q. For how much insurance?

A. Well, I think—in other words, I think if I

(Testimony of Frank Hassett.)

got out there deliberately to write the insurance, I could have written another two thousand dollars.

Q. Was the amount of two thousand dollars ever mentioned between you and Mr. Questa prior to the fire?

A. No, no amount was mentioned until after the fire.

The Court: Just a moment. I didn't exactly understand one expression of the witness. I would like to have you explain what you mean by "mental memorandum."

A. Well, after growing better acquainted with Silvo as time went on, I think what Silvo meant for me to do the first time I met him was to go out and see the barn and whatever I thought right for it I should write on it without any further conversation with him and I didn't, unfortunately, understand his language at that time.

Q. You have related the conversations, I take it, Mr. Hassett, as they occurred, to the best of your recollection?

A. Yes sir.

Q. And what you said just now to the Judge is something you have thought about the conversations in your own mind later?

A. Correct. [113]

Q. Now did you have a talk with Mr. Questa after the fire?

A. Yes indeed.

Q. You had a talk with him after the fire?

A. I did.

Q. Will you describe when that took place and where?

(Testimony of Frank Hassett.)

A. In my office, about two or three days after the fire, because Silvo came in and asked me if I had learned about the fire, because he had been away hunting so he didn't know about it for a couple of days after the fire, so he came in immediately.

Q. Came into your office?

A. That is right.

Q. Tell us the conversation that took place then.

A. Well, naturally, Silvo, after inquiring if I knew about the fire, I said, yes, I read about it, so then he asked me, he said, "Frank, am I insured or not?" I said, "No, Silvo, unfortunately for you, as far as we are concerned, you are not."

Q. What did he say then?

A. Naturally he grew very peeved. I said, "Silvo, in all my experience, this is the first time anything like this has ever happened to me; it is nobody's fault but my own, one hundred per cent. You told me you wanted me to go out, you told me again, and you repeated it the third time. I was out there once and unfortunately you were not there, and yet that still is no justification for me in four or five months' time not being able get three or four miles out from town, but at the time I was so busy and had so much to do I couldn't get out. I thought about it a million times but," I said, "I won't be satisfied with this [114] matter, I will submit the entire deal to our company and let them decide. They are the only one that can decide."

(Testimony of Frank Hassett.)

Q. Did Mr. Questa say anything about the amount of insurance at that time?

A. Yes, he told me had I come out he would have insured for four thousand dollars.

Q. Did he say anything about replacement costs?

A. No sir, we didn't discuss that. Oh yes, he said, "I can't replace it for twice that much."

Q. Now do you recall a subsequent conversation with Mr. Questa in regard to this burned barn, the fire?

A. Oh yes, Silvo came in the office frequently and we would meet and discuss it. He mentioned about my offer to take him to San Francisco, which I did on two different occasions.

Q. Did Mr. Questa say anything to you about the amount that would be involved to your company in premiums if they recognized this liability?

A. Silvo told me if the company would recognize it, he certainly would be a good boster for us and me in particular.

Q. Was any amount mentioned in that conversation?

A. Well, naturally he said probably more than match the amount.

Q. Was the amount mentioned?

A. I don't think he mentioned it because he already stated the amount of four thousand dollars and I think he might have meant a similar amount.

Q. Did you have any conversation whatever with

(Testimony of Frank Hassett.)

Mr. Questa concerning insurance on the stone house, the old house, before the fire? [115]

A. Yes, before the fire—no, after the fire.

Q. When did you have your first conversation with Mr. Questa with regard to insuring the old house? A. The date of our policy.

Q. What date was that?

A. September 30th.

Q. 1941? A. Yes.

Q. And where did that conversation take place?

A. In Colbrandt's. I went in there about 11:00 or 11:30 for lunch and I met Silvo.

Q. What was the conversation?

A. Well, we talked for a couple of minutes. He said, "I haven't any insurance out there—" and I thought he called it the old house, but I since learned he calls it the rock house, and the old barn.

Q. That is the small barn?

A. Yes, and the contents; so I said, "Well, Silvo, now listen, we are going through one argument right now and I hope it works out fine for both of us, and why don't you give me the order now, authorizing me to write a stipulated amount of insurance on each of those items." He said, "All right." So I wrote them down on a piece of paper, and that is the date of the policy.

Q. The policy was issued the same day?

A. No, not issued the same day. We very seldom succeed in issuing a policy the same day we get the order.

(Testimony of Frank Hassett.)

Q. But it is issued as soon as you can get at it thereafter?

A. That is right, as of that date. [116]

Q. Was it the first conversation you had with him concerning insurance on the stone house?

A. I wouldn't say the first one. It was the only time he authorized us to write any insurance on the stone house.

Q. Do you recall whether insurance on the stone house was mentioned at any of these prior conversations when the policy was talked about?

A. He might have, I can't recall.

Q. Did you issue a cover note on the stone house? A. Yes.

Q. Do you have that?

A. No, I did not bring that with me, but this policy merely replaced the cover note, the same thing. That was merely to wait for the couple of weeks probably, because we were so far behind at that particular time.

Q. Did you issue the cover note the same day?

A. Oh yes—no, I wouldn't say that—issued the following day.

Q. Within a day or two? A. Yes.

Q. What did you do with the cover note?

A. It should have been mailed to Mark Yori, Jr.

Q. And is that in accordance with the usual custom of your office when you are giving firm orders for insurance?

A. Yes, when it is placed thru an agent.

(Testimony of Frank Hassett.)

Q. I mean as far as issuance of cover notes is concerned?

A. It is customary, yes, but lots of times it takes two or three days and then I might write the policy without writing the cover note. [117]

Q. But when you are going to be a substantial time? A. Then we write a binder.

Q. You mean a cover note?

A. Or a cover note.

Q. I mean the words mean the same thing?

A. Correct.

Mr. Levit: That is all.

Cross-Examination

By Mr. Boyle:

Q. Mr. Hassett, did you insure some onions down there? A. Yes, sir.

Q. Do you remember the amount?

A. No, not off hand. It seems to me it was two thousand and increased to three and four and kept on increasing.

Q. Did you issue a policy?

A. No sir, just cover notes.

Q. And you then didn't issue policies because the onions had been disposed of?

A. Correct.

Q. And under those circumstances you don't believe in issuing policies, is that correct?

A. Not one that is going to be just temporary coverage. It costs too much money to write a policy and cancel the contract. It is so much easier

(Testimony of Frank Hassett.)

to write a cover note when it is only temporary; wouldn't write a policy, will write a binder.

Q. Among statements made by you at the present date being so different from Mr. Questa's, you believe Mr. Questa is mistaken when he said he wanted you to carry insurance of \$7500.00?

A. On the barn? [118]

Q. Yes.

A. Well, he never made mention of any figure to me on that barn that I can recall, until after the fire.

Q. And then the time he first met you mentioned that he did not state he wanted insurance on the barn of \$7500.00?

A. No, I don't recall.

Q. He could have?

A. I don't see how he could have without my recalling it, I really don't, because I would have made a memorandum of it immediately because I was going up to look and I don't like to carry anything like that in mind.

Q. When you said you made a mental memorandum a few minutes ago, what time was that you stated to yourself you should have made a mental note?

A. After the fire.

Q. What would you have made a mental note of prior to the fire of things Mr. Questa told you so you would have a mental note?

A. Oh, just ordinary notes that a man my age can recall.

Q. Well, you are not very old, are you?

(Testimony of Frank Hassett.)

A. Sometimes.

Q. How old are you? A. Forty-nine.

Q. You can remember very well, you can remember as well as when you were twenty-one, can you not? A. Possibly.

Q. You remember going out to the ranch, do you not? A. Yes sir.

Q. How do you construe the vast difference in the testimony of [119] Mr. Questa and Mrs. Questa, with relation to the time when you say you were there in July and they maintain you were there in August, August 15th?

A. I am unable to explain it. I have been trying to rack my brain after I heard them both testify to that time, because I can recall distinctly talking to Silvo and telling Silvo at Club 116 that I had been out and he said, "Yes, I know you have been out there but that doesn't do me any good because I wasn't there" and that was about two days after we received the order from the Brown Motors for his automobile policy.

Q. When Mr. Questa had seen you after the fire, how do you explain the conflict in testimony between you and him, such statements, that is for him not to worry and it was for you to worry from that time on and you put your hand to your head and said, "Oh, Jesus, it is all my fault."

A. I didn't say that because I don't talk that way and don't act that way.

Q. You did use "hell" two or three times?

(Testimony of Frank Hassett.)

A. I couldn't act that way, put my hand to my head that way; I would never do it, I would never do it.

Q. All the statements made by Mr. Questa that you made relative to this barn were not made by you, is that so? A. Quite right.

Q. Now with relation to the statement made by Mrs. Questa that you were out there in August of 1941, that too, then, is not correct, is that so?

A. The time is not right. The time does not agree with the time of my memory because I recall talking to Silvo about two or [120] three nights after July 25th, which is the date of the first automobile policy, both of them now, but the first, as I explained covered public liability and property damage and a couple of days after that Silvo proved that he wanted me to write all his insurance by his calling Brown Motors and making them give me the balance of the automobile insurance, and I recall talking to Silvo at that time about having been out there.

Q. Do you recall anything being said to the effect that you had been running up and down to Las Vegas so much that it had slipped your mind?

A. To go out there?

Q. Yes.

A. No. I told him I had been travelling around the State so much I didn't get time to get out to the ranch.

Q. And you didn't say anything about forget-

(Testimony of Frank Hassett.)

ting the matter of insurance. You already said you were out there in July? A. That is right.

Q. And you spoke to him after that, did you not, on two occasions? A. On two?

Q. Yes, you said you spoke to him at Club 116 and Colbrandts.

A. Colbrandts was after the fire.

Q. Also Club 116 was after the fire?

A. No, that was before.

Q. Did you not mention to Silvo for him not to worry about the matter, that it was your worry from now on? A. Oh no.

Q. You didn't say such a thing? [121]

A. No, I didn't use that phraseology. What I did indicate to Silvo was I remember telling him he didn't have a case. I should have been out there within a four-month period between the first time he told me and the fire, that no one could hardly understand why a man couldn't get out to a ranch as nice as his place and with his trees, three and a half miles out of town more than once in three months, but I said I wouldn't assume the responsibility and be the judge of the matter, I would submit the entire matter to San Francisco and let the company decide.

Q. That was the entire story, as you understood it? A. Yes.

Q. With relation to that mental note that you said you should have made after having known Mr. Questa as long as you have after the fire and

(Testimony of Frank Hassett.)

also knowing his system of doing business, you would have insured the building for the amount you considered it worth and let it go at that?

A. I felt that Silvo—if I had been down to the ranch I could have written another two thousand dollars.

Q. In other words, it was plain enough to you that he wanted you to insure the hazard at the same rate and in the same manner and in the same company as he had done business with you?

A. He never indicated anything of the kind. He indicated he wanted me to write all his insurance, that he indicated plainly, not once but many times.

Q. Then if you were to go back and write out an insurance policy, as you said you should have made a mental reservation and done so, that would have been the form of insurance you should have made out with the Milwaukee Mechanics' for two thousand [122] dollars?

Q. I would not have mentioned any name because Silvo never was familiar with the name of any company I represented. He was relying upon me.

Q. As representative of the Milwaukee?

A. I wouldn't say that.

Q. Any way your company?

A. My company that I represent.

Q. And you represent the Milwaukee Mechanics', is that right?

A. Yes.

(Testimony of Frank Hassett.)

The Court: We will take a recess at this time until tomorrow. This case will be continued until tomorrow, June 24, at 10:00 o'clock. All witnesses should return.

(Recess taken at 4:15 P. M.)

Wednesday, June 24, 1942
10:00 A. M.

Appearances: Same as of June 23rd.

Mr. Levit: Your Honor, Mr. Hassett just phoned he is not feeling very well, but he will be here a little later and I told him we would go ahead with another witness.

The Court: All right. You have the other witness you had a few questions to ask. He is back again.

MR. WILLIAMS,

having been previously sworn, testified [123] as follows:

Re-direct Examination

By Mr. Boyle:

Q. Mr. Williams, yesterday we were discussing various dimensions and also the sizes of timber, etc., and you had given a report of the amount of feet of lumber and also the labor it would take to construct that barn, is that so? A. Yes.

(Testimony of S. L. Williams.)

Q. Now after that we suggested that you retire and take the amount of board lumber in the floor and also the stalls and the cost to install them, to be deducted from your estimate, so that you might estimate what it would be without the floor and stalls, is that what you understood? A. Yes.

Q. Are you prepared to give a report on it?

A. Yes. Shall I read this?

Q. Yes.

A. 225 lineal feet 10 x 12 sills, that makes 2250 feet board measure; 270 pieces 3 x 8; 16 floor joists; 8,640 feet plank flooring, 12,690 feet; 18 stalls, 14,832 feet. Now that makes a total of 38,412 feet.

Q. What would be the cost of that, installing it, if you so figured it in your first computation?

A. Well, I have it here. The cost of the lumber at 38,412 feet, \$1805.36; hardware, \$28.00; labor, \$1380.00; tax, insurance, \$133; contractor's profit, \$329.63.

Q. Is that your total now?

A. No, the total would be \$3,625.99.

Q. That is from \$3,625.99, you would deduct that from your [124] figure you had presented to the court yesterday?

A. That is the cost of stalls, floor joists, plank floor, the stalls.

Q. And that would be deducted from your figure, in order to bring it up to this condition it was at the time it burned? A. Yes.

(Testimony of S. L. Williams.)

Q. Mr. Boyle: You may cross-examine.

Re-cross Examination

By Mr. Levit:

Q. What types of board did you figure in the walls of this barn?

A. You mean the exterior siding?

Q. Yes.

A. I figured one by 12 and one by four batten.

Q. Where did you get the information that that was what the barn contained?

A. Well, my memory mostly, what I see.

Q. Five years before?

A. Something like that, I don't remember exactly.

Q. Are you prepared to swear now that that is the lumber that was in the barn?

A. Well, I am almost certain, yes.

Q. What about the metal rods that you figured? You figured a lot of metal rods, didn't you?

A. Yes.

Q. How did you know how many of those there were?

A. Well, I figured there would be a brace over each post, 10 x 10 post.

Q. You couldn't see that from the floor of the barn, the bottom floor, could you? [125]

A. Well, I couldn't see it but I did find some of the old braced lumber and rods along the river bank.

Q. And you just figured then the floor was so constructed?

(Testimony of S. L. Williams.)

A. Well, it wouldn't stand; it had to have some support.

Q. And you assumed that was the type of support?

A. That was the way I figured it, yes.

Q. You didn't see that, of course, when you were there five years ago?

A. I didn't see a brace over each column, no.

Mr. Levit: That is all.

MISS LENA PORTA,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit:

Q. State your full name please?

A. Lena Porta.

Q. Where do you live?

A. 403 West Third Street, Reno.

Q. What is your occupation?

A. I am secretary for Frank Hassett.

Q. How long have you been employed by Mr. Hassett?

A. A little over a year.

Q. Were you employed by him in September of 1941?

A. Yes sir.

Q. Will you explain to the court please where your office is in relation to Mr. Hassett's office?

A. Yes; there are two rooms adjoining and

(Testimony of Miss Lena Porta.)

there is a door in between and that door is nearly always open and it is 18 feet from his desk to mine.

Q. You recall I asked you to check that distance yesterday? [126] A. Yes.

Q. Do you recall an occasion in September, around the 24th or 25th of September of 1941, when Mr. Questa, one of the plaintiffs in this case, came to call on Mr. Hassett? A. Yes sir.

Q. You know Mr. Questa, do you?

A. I do.

Q. Is that the gentleman behind you?

A. Yes, that is Mr. Questa.

Q. And do you remember what time of day it was approximately?

A. No, I can't remember.

Q. Well, at any rate, you remember Mr. Questa coming in to call on Mr. Hassett. Did you announce him or did he just walk in?

A. No, I believe Mr. Hassett saw him and told him to come in.

Q. Saw him through the open door?

A. Yes.

Q. And you were working on your own desk at the time? A. Yes sir.

Q. Did anything occur during that conversation that called it to your attention? A. Yes sir.

Q. What was it?

A. Well, as I say, he went in there and started to talk. I didn't hear the first part of the con-

(Testimony of Miss Lena Porta.)

versation, but after he had been in there a few minutes he raised his voice and seemed quite angry about something and I heard him say, "That is a dirty trick for anybody to play, Frank. I told you three times to come out and if you had come out there I would have four thousand dollars in- [127] surance on the barn and I know it is worth over \$7500.00," and that is about all.

Q. Did you overhear any other part of the conversation? A. No, I don't think I did.

Mr. Levit: You may cross-examine.

Cross-Examination

By Mr. Boyle:

Q. Kindly repeat the exact words, as you recollect them, that were spoken first by Mr. Hassett to Mr. Questa and then by Mr. Questa to Mr. Hassett.

A. The first thing I heard was what Mr. Questa said, "That is a dirty trick for any one to play, Frank", and he also said, "I told you three times to come out and if you had come out there I would have had four thousand dollars insurance on the barn and I know it is worth over \$7500.00."

Q. When you heard that conversation, was that the only part that you heard of the entire conversation? A. Yes sir.

Q. How long did that take?

A. Oh, that only took a few minutes.

Mr. Levit: You mean the whole conversation or just what she told you about?

(Testimony of Miss Lena Porta.)

Mr. Boyle: The whole conversation that took place during the meeting.

A. I think he was in there about ten minutes.

Q. And you were 18 feet apart, you say?

A. Yes.

Q. And the door was open? A. Yes. [128]

Q. How long was he in there before that particular conversation took place?

A. Oh, three or four minutes.

Q. Then during that time they didn't stand together and say nothing, did they?

A. They talked but I had my own work to do and was busy.

Q. But you know they were talking about insurance?

A. I guess they must have been; I couldn't say for sure.

Q. You didn't hear what Mr. Hassett said to Mr. Questa, did you? A. No.

Q. Until you heard Mr. Questa raise his voice?

A. That is right.

Q. They might have been talking about other things and you wouldn't know it?

A. Could be.

Q. But all you heard was the remark you said you attributed to Mr. Questa? A. Yes.

Q. About asking him to come down three times and if he had come down he would have had four thousand dollars insurance, is that it?

A. Yes sir.

(Testimony of Miss Lena Porta.)

Q. Have you charge of the records in your office? A. What records?

Q. The records of this case are in your custody?

A. Daily records on fire insurance.

Q. Have you the reports on this case you sent to San Francisco?

Mr. Levit: What reports? [129]

Mr. Boyle: On the fire proposition.

A. I don't believe I saw any reports.

Q. Did you make out any; aren't you a stenographer?

A. Yes, but I didn't make out any reports.

Q. You say you have been employed there a year? A. Yes sir.

Q. How many girls are employed in the office?

A. There are two now.

Q. How many then?

A. Just I and the bookkeeper, a boy.

Q. And you would do the correspondence, would you not, for the firm? A. Yes.

Q. You were the stenographer?

A. Yes sir.

Q. And you would file away reports?

A. We had a girl come in some time to do filing.

Q. But nevertheless you did the correspondence?

A. Yes sir.

Q. And you took care of all correspondence?

A. Yes.

Q. Have you the reports that you had written

(Testimony of Miss Lena Porta.)

in to San Francisco or elsewhere from this firm, relating to this fire?

Mr. Levit: Just a minute. The witness has already testified so far as she knows there were no reports and she didn't write any and we object to the question as not proper.

Mr. Boyle: It is the matter of the fire and ramifications thereof and I have a right to go into reports to save [130] time and question the credibility of the witness.

The Court: I will permit the examination.

Q. You testified that you were the secretary?

A. Yes sir.

Q. There were no other stenographers there?

A. No.

Q. And you took care of all correspondence of Mr. Hassett's, did you not?

A. As far as I know I did.

Q. That took place in the office? A. Yes.

Q. Have you a file in the office pertaining to this matter?

A. We have a file for Mr. Questa, yes sir, but I don't remember any reports about the fire.

Q. If there were any reports written you would have written them?

A. If I would have written them, I am very sure I would have remembered.

Q. Were there any reports made to the San Francisco office? A. I do not know.

Q. If there were, you could find them, couldn't you?

(Testimony of Miss Lena Porta.)

Mr. Levit: Not unless they were in writing.

Mr. Boyle: We presume they are in writing; certainly they wouldn't be sent down orally.

Mr. Levit: I don't think it is proper cross-examination.

The Court: You may examine.

A. I don't remember seeing any reports in the file.

Q. Have you such a file known as the Questa file in your office? [131]

A. Yes.

Q. Can you produce it?

A. Yes.

Q. Will you bring it up?

A. We have a file, yes.

Q. Can you get it and bring it up here?

A. I suppose so.

Mr. Levit: Those files belong to Mr. Hassett; they do not belong to this witness. Mr. Hassett is here.

The Court: I think that is true. You can ascertain if the files exist.

Mr. Boyle: That is not a matter of anything personal. We are not suing Miss Porta or Mr. Hassett. We are suing the Milwaukee Insurance Company and they, as representatives of the insurance company, are merely agents, servants of the insurance company; consequently, their identity is lost and we are suing the Milwaukee Mechanics' Insurance Company, and consequently when we ask, we ask it of the Milwaukee Insurance Company.

(Testimony of Miss Lena Porta.)

Mr. Levit: Mr. Boyle, I would like to say right now, for the record, you are more than welcome to any reports made to the company by Mr. Hassett. I merely object—this is not the proper way to obtain them, from this girl. They are not her reports, she is only the secretary and the reports do not belong to her; they are Mr. Hassett's, and I will instruct Mr. Hassett to bring you any reports you want, if there are any.

The Court: I will permit the examination whether this witness knows if any such reports were made.

Q. You said you do not remember whether or not any reports were [132] made?

A. I did not see any.

Q. You do not remember any report being made by the agency of the Milwaukee Insurance Company to any headquarters of the Milwaukee Insurance Company? A. No sir.

Q. How many times, to your recollection, did Mr. Questa come into your office, that you recollect?

A. During all the time I have been there?

Q. Yes.

A. Oh, let's see—oh, about four or five times.

Q. Four or five times that he came into the office? A. I think so.

Q. Kindly state the times, the four or five times he came into the office, giving your recollection of the dates and who were present.

(Testimony of Miss Lena Porta.)

A. Well, I can't remember the first time, but the last time he came in, as I said, that day I overheard the conversation, and then he came in about two times after that, two or three.

Q. Then that would be three times he went to the office?

A. And I can't remember the other times.

Q. You say after he came in after the fire, he came in once and then twice more, is that it?

A. Yes.

Q. Then that would be three times after the fire? A. Approximately.

Q. Do you remember how many times he came before the fire, at any time? [133]

A. He came in all right but, oh, about two times. I can't remember when it was though.

Q. Did you make any notes as to the time when he came in, or did you make any reports or writings pertaining to his visits? A. No, I did not.

Q. Do you know what he came in for, of your own knowledge?

A. No, he always spoke to Mr. Hassett when Mr. Hassett was in. He didn't say anything to me.

Q. Then you don't know anything about his visit there, as to what the purpose of his visit was?

A. No sir, except the last time he came in, and that was to bring us a check.

Q. When was the last time he came in and brought you a check?

A. Let's see—I think it was about two weeks ago, not very long ago.

(Testimony of Miss Lena Porta.)

Q. And after the fire occurred and after the visit of Mr. Questa, in which you said he raised his voice, how many times did he come into the office for the purpose of insurance on other buildings, if you know? A. On other buildings?

Q. Yes, if you know?

A. Well no, I don't know.

Q. How many times then did he bring checks into the office after the fire?

A. After the fire—only once that I know of.

Q. How long after the fire was that?

A. Well, let's see—it was two weeks ago—it was about eight months.

Q. It was about eight months ago? [134]

A. You said how long after the fire did he bring in the check?

Q. Yes. I mean after the fire took place in September.

A. He came in just two weeks ago and brought a check.

Q. At the time you said Mr. Questa raised his voice, it naturally attracted your attention to a great degree, did it not? A. Yes sir.

Q. And naturally you listened?

A. I couldn't help it.

Q. And naturally you listened to the reply or retort on the part of Mr. Hassett, didn't you?

A. I don't remember hearing anything.

Q. As a matter of fact, he did say something, didn't he? A. Oh yes, he said something.

(Testimony of Miss Lena Porta.)

Q. What did he say?

A. I don't remember.

Q. How is it you can remember so plainly what Mr. Questa said and not what Mr. Hassett said?

A. Because Mr. Questa was excited and spoke very loud.

Q. And how did Mr. Hassett reply?

A. Not loud enough for me to hear.

Q. Did you talk your testimony over with any one before you came into court? A. No sir.

Q. Not a soul? A. No.

Q. No one spoke to you?

A. I spoke to the lawyer. Mr. Levit asked me to be a witness.

Q. When was the first time you informed them about this conver- [135] sation?

A. The first time I told them I had heard?

Q. Yes.

A. It was some time last fall. In September he had come there. Mr. Levit was there and they asked me if I seen him come in and heard anything.

Q. When you say last fall, when did Mr. Levit come to your office on this case?

A. I don't remember—it was about a month or two—October or November, I believe; I am not sure of that.

Q. October or November? A. Yes.

Q. Do you remember having received proof of loss from Mr. Questa in your office? A. Yes.

Q. Was Mr. Levit's visit to your office prior to

(Testimony of Miss Lena Porta.)

the time of receiving of proof of loss or was it after?

A. I think it was after.

Q. You think it was after receiving proof of loss?

A. I think so.

Q. Then you are mistaken as to the time—it couldn't have been in the fall?

A. I really don't know.

Q. Let me show you proof of loss and let that refresh your mind as to the time.

A. I saw just one proof of loss.

Q. Well, even one then. Now you will observe if you received the proof of loss that these were not mailed until quite a long [136] time after the first of the year, do you recollect that?

A. I wasn't sure when it was.

Q. Then you might have been mistaken?

A. Yes, I might have.

Q. And you could have been mistaken in your other testimony?

A. About what?

Q. About other things that happened?

A. No.

Q. You are sure about that?

A. I am quite sure.

Q. But you are not sure about the conversation had by Mr. Hassett and Mr. Questa, you couldn't hear that?

A. I heard only what I testified to.

Q. You say you were 18 feet away and couldn't hear?

(Testimony of Miss Lena Porta.)

A. I was busy and tried not to listen.

Q. Now going back to Mr. Levit's visit to the office, do you want to correct that with relation to his visit here pertaining to this fire?

A. I said I don't know when it was. I can't remember.

Q. You said you spoke the matter of testimony over, the testimony you have given, over with Mr. Levit and you said you testified to it in the fall of 1941?

Mr. Levit: No, she said she thought it was then, but she wasn't sure.

Q. Do you want to correct that?

A. Correct what? I say I don't know; I am not sure when he came there. I can't remember.

Q. You are not sure? [137]

A. No, I know he was there, that is all.

Q. As a matter of fact then it was after you received proof of loss? A. I think it was.

Q. And it wasn't in the fall?

A. It couldn't have been.

Q. You want to correct it to that extent?

A. Yes.

Mr. Boyle: That is all.

MR. HASSETT

resumed the witness stand on further re-direct examination by Mr. Levit:

Q. Mr. Hassett, what companies or underwriters do you represent in your office?

A. The Milwaukee Mechanics' Insurance Company, Commercial Casualty Insurance Company, Lloyds of London, and then we, of course, have occasion frequently to place insurance with other markets when, for instance, we see a risk that we do not like the entire liability, I have agents in San Francisco and Los Angeles and I will divide the liability with them.

Q. But so far as having policy issuing authority or binding authority is concerned, that would apply to the first group you mentioned?

A. Correct.

Q. Which of those groups or underwriters that you have mentioned are fire insurance as well as other forms of insurance?

A. All but the Commercial Casualty.

Q. And you have binding authority for all of them? A. Yes. [138]

Q. For fire except Commercial Casualty?

A. Right; they are only casualty.

Mr. Levit: That is all.

Mr. Boyle: No re-cross examination.

MR. JAMES CORICA,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit:

Q. What is your name, please?

A. James B. Corica.

Q. Mr. Corica, you live in Reno, do you?

A. Yes, sir.

Q. What address?

A. 515 Imperial Boulevard.

Q. How long have you lived here?

A. Twelve years.

Q. What is your business? A. Insurance.

Q. And be more specific as to the company and insurance.

A. I am manager for L. R. Eby & Company, Reno office, General Agents.

Q. When you say "general agents", you mean that you represent companies for the entire State of Nevada, insurance companies? A. Yes sir.

Q. The same way Mr. Hassett represents the companies he spoke about? A. Yes sir.

Q. Without going into detail, tell us some of the companies you represent. [139]

A. Occidental, Pacific National Fire Insurance Company, Western Assurance Company, Occidental Indemnity Company, Hay Fire and Marine Insurance Company.

Q. How long have you been in the insurance business? A. Nineteen years.

(Testimony of James B. Corica.)

Q. Have you ever represented the Milwaukee Mechanics' Insurance Company? A. No sir.

Q. Has the firm of L. R. Eby & Company ever represented the Milwaukee Mechanics' Insurance Company during your association? A. No sir.

Q. What is your business with L. R. Eby & Company? A. Manager Reno office.

Q. How long have you been manager of the Reno office? A. About eight years.

Q. Is Mr. Hassett a competitor of yours?

A. Yes sir.

Q. Among the lines of insurance that you handle through your office, is fire insurance one of those lines? A. Yes sir.

Q. And other lines as well, I take it?

A. Yes sir.

Q. Now do you remember in September of 1941 you made a visit to the Questa ranch in company with Mr. Howard Parish? A. Yes sir.

Q. Will you tell the court please what occasioned that visit?

A. Mr. Parish, one of our agents, asked us to cover some hay for one of his clients that was stored in the Questa barn. We [140] issued a cover note as of August 15th in order to immediately bind the risk. On September 9th Mr. Parish phoned and asked me if I wouldn't go out to the ranch with him to look over the hay.

Q. What date was that?

A. September 9th.

(Testimony of James B. Corica.)

Q. How do you fix that date?

A. I fix the date from the time that we issued our policy.

Q. When did you issue your policy?

A. We issued our policy on September 10th.

Q. And it was the day before that that you accompanied Mr. Parish to the Questa ranch?

A. Yes sir.

Q. Did you see Mr. Questa when you were there? A. Yes sir.

Q. Tell us what you did when you got there and what happened?

A. We drove into the ranch in Mr. Parish's car and Mr. Questa was working on a pump near one of the houses. We told Mr. Questa what we were there for and we walked over to the barn, walked around outside of the barn to see the hay that our client had and then entered the barn to check the baled hay that was stored in one section of the barn.

Q. Now there were, as I understand, two barns on the ranch and you have been speaking of one. I am going to show you Plaintiffs' Exhibit No. A-1 and ask you if that is the barn that you are speaking of? A. Yes, that is the barn.

Q. Now you were there to examine some hay that was stored in that barn that belonged to a Mrs. Cupit, is that right? [141] A. Yes sir.

Q. Did Mr. Questa assist you in locating this hay and inspecting it?

A. Mr. Questa took us into the barn and showed

(Testimony of James B. Corica.)

us Mrs. Lindley's hay. It was all baled hay, and he told us the approximate number of tons that were in the barn.

Q. You said Mrs. Lindley, that is the same woman later known as Mrs. Cupit, is that correct?

A. Yes sir.

Q. Did any conversation take place at that time with regard to insurance of Mr. Questa on Mr. Questa's property?

A. The three of us, as we left the barn, were talking about insurance. Mr. Parish asked Mr. Questa if he had insurance on the barn. Mr. Questa said that he did not have it insured. He asked us what the rate would be. We gave him an approximate rate of \$1.85 a hundred for one year. Mr. Parish asked him if he wouldn't let him insure it. Mr. Questa said he didn't want to insure it, that Mr. Hassett took care of all his insurance business. Later we talked about hay insurance and asked if he carried insurance on his hay. He stated that he did not, due to the fact that the hay was in various piles over the entire ranch and if he had a loss on hay, it would only damage one stack.

Q. Do you recall whether he said he had had any conversation with Mr. Hassett concerning figures for insurance on the barn? A. No.

Q. You mean you do not recall?

A. I do not recall his mentioning anything about asking Mr. Hassett for rates on the barn. His reply was that Mr. Hassett [142] took care of all his insurance.

(Testimony of James B. Corica.)

Q. Now you recall, Mr. Corica, that on the 26th of January I came to see you at your office?

A. Yes.

Q. And at that time you gave me a resume of that transaction? A. Yes sir.

Q. And it was taken down in shorthand, do you remember that? A. Yes sir.

Q. I am going to read you one of your answers from that statement and ask you if that refreshes your recollection regarding whether you and Mr. Questa had a conversation regarding figures on the barn.

Mr. Boyle: Objected to as incompetent, irrelevant and immaterial; it is hearsay, not proper examination.

The Court: As I understand, it is conversation.

Mr. Boyle: But Mr. Questa is not a party to it. He can not testify to something that is hearsay. That is hearsay as far as the court and we are concerned.

Mr. Levit: If the statement I read the witness does not refresh his recollection, that ends it. If the witness recalls and that refreshes his recollection, I think it is proper.

The Court: I will permit it, subject to the objection.

Q. One of your answers, Mr. Corica, I asked you:

“Do you recall that he mentioned he received some letters from Mr. Hassett?

(Testimony of James B. Corica.)

“A. Do you want positive answer?

“Q. No, just to your best recollection.

“A. My best recollecton is that he mentioned [143] that Mr. Hassett handled his insurance and Mr. Hassett was going to supply him with some figures.”

Now does that refresh your recollection as to whether there was any conversation between you and Mr. Questa and Mr. Parish regarding the fact that Mr. Questa said or did not say that Mr. Hassett was going to furnish him with some figures?

A. Mr. Questa stated Mr. Hassett was handling all of his business.

Q. That is all that you recall? A. Yes.

Q. Now, Mr. Corica, will you describe, please, the barn as you observed it and its condition?

A. The barn was quite a large barn, very old. The interior was full of cobwebs, hanging down from the roof and all over the place. We commented on the cobwebs. Had a fire occurred—this was a conversation between Mr. Parish and myself.

Mr. Boyle: Objected to as hearsay.

Q. Was Mr. Questa there at the time?

A. Mr. Questa was behind us. I don't think he overheard the conversation.

Q. Don't relate the conversation, just tell us what you observed. A. We observed——

Q. What you observed.

A. I observed the barn was full of cobwebs, that the north end of the barn, where there may have

(Testimony of James B. Corica.)

been a loft, the floor of the loft was full of holes. I would say that the barn was in fair condition, not at all good. [144]

Q. What was the condition of the roof from the outside, if you observed it?

A. I would say the roof was in fair condition.

Q. What about the paint?

A. I don't think that the barn had been painted for probably several years.

Q. You stated when this insurance on the Lindley or Cupit hay was first given to you in August by Mr. Parish, you issued a binder to cover the hay?

A. Yes sir.

Q. Was that in accordance with the usual custom when a risk is firmly bound? A. Yes sir.

Q. And when I say "in accordance with the usual custom" I mean not only of your office, but of the fire insurance business in Reno.

A. That is the usual custom. I can state that this is the usual custom of all companies, that any time we get an order for a risk on which we can not immediately issue a policy, usually we issue a cover note or binder to protect that risk from the time that we get the order from our agent.

Q. Is that the general custom of the business here? A. Yes sir.

Mr. Levit: That is all.

(Testimony of James B. Corica.)

Cross-Examination

By Mr. Boyle:

Q. Mr. Corica, what is the date that you went to the barn? A. September 9th.

Q. What was your purpose of going to the barn? [145]

A. We went to the barn to check the hay that was stored in the barn for our assured.

Q. You say for "our assured", then if you say "for our assured" you mean there was insurance on the hay? A. Yes sir.

Q. When was the insurance placed upon the hay? A. August 15th.

Q. How do you account for the insurance being on the hay on August 15th?

A. Mr. Parish phoned my office, told me to cover the hay; he didn't know exactly the amount of hay there was on the ranch, and I executed the cover note, delivered it to Mr. Parish.

Q. Do you remember what date you went to the ranch with Mr. Parish? A. September 9th.

Q. Did Mr. Parish have any insurance on this hay? A. Yes sir.

Q. What date?

A. The insurance was placed as of August 15th.

Q. Now do you know anything about the transaction of the hay by Mr. Questa as to the purchase and the reason for the insurance?

A. The reason for the insurance was to protect Mr. Parish's client. I do not know anything about

(Testimony of James B. Corica.)

the transaction, insofar as the purchase of the hay or storage of the hay or anything else.

Q. You don't know anything about the transaction pertaining to the purchase of the hay. All you know was she purchased——

A. All I knew it was her hay that was in the barn.

Q. It was her hay that was in the barn. Now do you know how [146] long she owned the hay?

A. No, I do not.

Q. Do you know anything about the purchase of the hay? A. No, I do not.

Q. What conversation did you have at any time with Mr. Questa during your visit to the ranch, pertaining to the hay?

A. My direct conversation with Mr. Questa?

Q. Yes, did you have any?

A. I did not have any conversation direct with Mr. Questa.

Q. Who was talking to Mr. Questa then, if anybody, if you recollect, in your presence?

A. Mr. Parish.

Q. What was said about the hay, if you recollect?

A. Mr. Questa gave us the approximate amount of tonnage that was in the barn.

Q. Do you remember now with relation to the approximate number of tons, how many tons of hay were in the barn belonging to Mrs. Cupit?

A. I think there were about eighty tons.

(Testimony of James B. Corica.)

Q. Eighty tons in the barn. Was there any other tonnage elsewhere that you know of?

A. There was some other hay alongside the barn.

Q. Was it cut and baled?

A. It was baled hay.

Q. And was that pointed out to you as being Mrs. Cupit's hay? A. Part of it was, yes.

Q. And the part that was pointed out to you, was that insured by you? [147]

A. That wasn't insured, no.

Q. Then when was the hay insured, if it were ever insured, outside of the barn?

A. I think our cover note was issued to cover the hay on the ranch and in the barn. The reason that we didn't insure the hay that was outside the barn was that it was being moved to her ranch and when we issued the policy that part of the hay, as I understand it, had already been moved and the only hay that we issued our policy on was the hay in the barn.

Q. Do you remember any instructions given to Mrs. Cupit about having the hay insured? Did you hear any one give her any instructions?

A. I never heard any one talk to Mrs. Cupit about the hay.

Q. Do you know Mrs. Cupit?

A. I know her by sight, yes.

Q. You didn't have any business with her outside this transaction?

(Testimony of James B. Corica.)

A. We have other business with her, yes, have other insurance business with her.

Q. In relation to the transaction of this particular hay, you said you had given a cover note of a certain date, which is dated here, which is marked "9-9-41." When was that put on there, this "9-9-41"?

A. Mr. Parish put that on there.

Q. Is this the original?

A. That is the original.

Q. Where is the copy?

A. There are two copies, one copy went to our San Francisco [148] office as evidence of coverage; the third copy is in our office.

Q. Would it have that red mark on it?

A. No sir.

Q. Who put that red mark on there?

A. I would say Mr. Parish put that red mark on there.

Mr. Boyle: That is all.

Re-Direct Examination

By Mr. Levit:

Q. Mr. Corica, do you happen to have your daily report on that policy with you?

A. Yes, I do.

Q. May I see it please? Does this daily report of the policy that you speak about, insuring this Cupit hay, show the date on which the policy was made out?

A. Yes, sir.

Q. What date does it show?

(Testimony of James B. Corica.)

A. September 10, '41.

Q. And that is the date, I take it, that enables you to fix the date of your visit to the ranch?

A. Yes sir.

Q. Is the day before that?

A. Yes.

Re-Cross Examination

By Mr. Boyle:

Q. However, it does not fix the date of the purchase of the hay, does it?

A. No sir.

MR. HOWARD PARISH,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit: [149]

Q. Mr. Parish, your full name is Howard Parish?

A. That is right.

Q. And you live in Reno?

A. That is right.

Q. Where do you live?

A. 577 St. Lawrence Avenue.

Q. How long have you lived in Reno?

A. Thirty years.

Q. What is your business?

A. Real estate and insurance.

Q. How long have you been in that business?

A. Twelve years.

(Testimony of Howard Parish.)

Q. Where is your office?

A. 156 North Virginia Street.

Q. What is the nature of the insurance business which you conduct?

A. Fire, auto, surety business.

Q. In what capacity?

A. I am a sub-agent.

Q. A local agent, in other words?

A. A local agent.

Q. For certain specified insurance companies?

A. Correct.

Q. What companies?

A. Occidental Fire Insurance Company; Pacific National Fire Insurance Company; Firemen's Fund Insurance Company, Northwestern Fire and Marine; Western Assurance Company.

Mr. Boyle: We stipulate he has a lot of insurance companies. [150]

Q. Are you agent, or have you ever been agent for the Milwaukee Mechanics' Insurance Company?

A. No sir.

Q. Do you know Frank Hassett?

A. Yes sir.

Q. Is he a competitor of yours in the insurance business?

A. Yes sir.

Q. Now do you recall an occasion in 1941 when you made a visit to the Silvo Questa ranch with Mr.

A. I do.

(Testimony of Howard Parish.)

Q. Can you tell us please when that visit took place?

A. September 9, 1941.

Q. How do you fix that date, Mr. Parish?

A. Well, I have a record that fixed it very definitely in my mind.

Q. Is this the record that you speak about?

A. Yes.

Q. Will you tell the court what that is?

A. That is known as a cover note or binder note, issued by an insurance company to evidence record of insurance until the policy is issued.

Q. Now was this cover note issued through your office?

A. It was issued at my request through the office of L. R. Eby & Company.

Q. When was it issued?

A. August 27th.

Q. That is the date that appears on the cover note, is it?

A. That is correct. [151]

Q. What is the effective date of the insurance?

A. August 15th.

Q. August 15, 1941?

A. That is right.

Q. You will notice on that cover note there is a red pencil notation, reading, "Ordered 9-9-41, Parish and Corica", will you tell us whether that is in your handwriting?

A. Yes sir, it is.

(Testimony of Howard Parish.)

Q. Will you explain to us when that notation was made and what the purpose is?

A. The binder note was held in my office for the period from August 27th until September 9, 1941, for the reason that I had delayed visiting the risk on behalf of my assured and on this date I called Mr. Corica and asked him if he had time to go with me to the Questa ranch to ascertain the amount of hay and the value thereof and the place of storage.

Q. When did you make that notation, after you came back?

A. After I returned.

Q. On the same day?

A. Exactly.

Q. That is on September 9, 1941?

A. Exactly.

Q. You stated from August 27th to September 9th you had not been able to go out to inspect the property?

A. Exactly.

Q. Why was that?

A. Well, for two or three reasons. I suppose the one I put up there, I knew Mrs. Cupit was in the practice of moving some of [152] the hay from the Questa ranch to her own property.

Q. But in the interim you had procured and held in your possession a cover note, evidencing the insurance, is that correct?

A. That is right.

Q. And that is this cover note, 09410, just referred to?

(Testimony of Howard Parish.)

A. That is right.

Q. Was the issuance of that cover note or binder at the time the insurance was definitely ordered or bound in accordance with the usual custom of your business affairs?

A. Yes sir.

Q. And is that also in accordance with the usual fire insurance business in the City of Reno?

A. Yes sir, I always request a binder for the record.

Q. I say in addition to your doing that, is it also in accordance with the custom of the fire insurance business in this city?

A. Exactly.

Mr. Levit: Now if counsel is willing, and in order that I do not take Mr. Parish's original records, I have a photostat of that cover note which I should like to offer in evidence instead of the original.

Mr. Boyle: We have no objection to the instrument itself. It may be put in if the Court sees fit, but we still have objection to the whole procedure, which we will bring out. However, for the record, I can object and can be overruled. I make objection, your Honor; I do not think it is the best evidence.

Mr. Levit: The original is the best evidence and we will—— [153]

Mr. Boyle: In lieu of the best evidence, you may offer it subject to my objection. I am not convinced it is a copy.

(Testimony of Howard Parish.)

The Court: Is it a photostatic copy?

Mr. Levit: Yes, sir. The original is here and counsel is within his rights in insisting that the original go in rather than the copy.

Mr. Boyle: You may offer the original and then I have no objection to substituting a copy.

Mr. Levit: We will do it that way. We ask the original cover note 09410 be marked as defendant's exhibit next in order.

The Court: It may be admitted. The legal effect, if any, we will consider later.

Clerk: Defendant's 5.

DEFENDANT'S EXHIBIT No. 5

Covering Note
No. 09410

L. R. Eby & Co.
General Agents

201 Sansome St., San Francisco, Calif.

For Assured

\$.....Western Assurance Co.	\$.....
\$.....Halifax Fire Ins. Co.	\$.....
\$.....Twin City Fire Ins. Co.	\$.....
\$.....Empire State Underwriters Dept.	\$.....
\$1000.00 Occidental Ins. Co	\$.....
\$.....	\$.....

Insurance against loss or damage by fire is hereby kept covered in the above named Company and for the amount given above, subject to the printed con-

(Testimony of Howard Parish.)
ditions of the Standard Fire Insurance Policy of the State, Territory or Province in which the risk hereby insured is located, or, (if there be no Standard Form of Fire Insurance Policy prescribed by the law of such State, Territory or Province) the printed conditions of the present Standard Fire Insurance Policy of the State of New York, shall be deemed to be a part of this cover note, except as hereinafter provided, as follows:

In favor of Monaei Lindley
Loss, if any, payable to Assured
On Hay in Barn on Silvio Questa Ranch
Situate About 4 Miles East of Reno, Washoe
County, Nevada

From Aug. 15, 1941, at Noon
To cease October 1, 1941 at noon
Or such time prior thereto as the Company's policy
may be issued on above described risk in lieu
hereof.

	Insurance Map
Dated 8-27-41	Sheet.....
Agency Howard Parish	Block.....
	No.....

By J. CORICA

[Red Pencil Notation]: Ordered 9-9-41 Parish—
Corica.

[Endorsed]: Filed June 24, 1942.

(Testimony of Howard Parish.)

The Court: You may substitute the photostatic copy.

Mr. Levit: We now ask leave of the court to withdraw the original and substitute the photostatic copy.

Mr. Boyle: No objection.

The Court: It may be admitted.

Q. Now, Mr. Parish, when you went to the Questa ranch on September 9, 1941, did you see Mr. Questa?

A. Yes sir.

Q. Did you have a conversation with him in the presence of Mr. Carico?

A. Yes sir.

Q. Will you tell us please, describe your visit to the ranch and what was said between the three of you.

A. We drove up to the ranch in the early afternoon of September 9, 1941, observed Mr. Questa near one of the buildings, tinkering [154] with some pump or something around the property, and I got out of the car, walked over toward him, told him that I had come down to look at the hay that belonged to Mrs. Cupit for insurance purposes and would he please show it to me. There was other inconsequential conversation about the weather, something like that, prior to that. He got in the car, or on the car, and first directed us down a lane to the east of the property and showed us a pile of hay piled by the lane, then brought us back to the barn

(Testimony of Howard Parish.)

and I parked my car more or less near the front of the barn. We walked thru some big doors into the barn.

Q. Before you go any further, so there will be no question as to what barn you are referring to, I am going to show you plaintiffs' Exhibit A-1 and ask you if that is the barn you are talking about?

A. That is the south exposure of the barn.

Q. All right, continue then please.

A. We walked into the barn in company with Mr. Questa and Mr. Corica. He pointed to the left and said, "That pile of hay belongs to Monaei."

Q. Monaei is the first name of the lady called Lindley and Cupit?

A. That is right. He said, "About 70 tons" and that fixed the place of the hay and amount of insurance we had to place on that, and that was all there was to that. As we walked out of the barn, I asked him if he had insurance on the barn and he replied no. We approached the car and he said, "What would the rates be?" I said, "Oh, I don't know. Jim, what are the rates?" Mr. Corica had his manual with him, but I don't think he even referred to it. He stated that it would be approximately two [155] dollars. We approached the car by this time and I remarked that he should have some insurance on the building, that I would like to write it. He says, "Well, Frank has it, has all my insurance" and that stopped me and I carried on no further conversation.

(Testimony of Howard Parish.)

Q. And then I take it that you left and the next day the policy of insurance was issued, taking up that cover note that you spoke about?

A. Exactly.

Q. Now will you describe, please, the condition of the barn as you observed it?

A. Well, the barn was an old barn. I have known it for some time. It is badly in need of paint. The interior of the barn was in pretty bad shape, trash piled around here and there and loose hay on the floor, cobwebs hanging down from the joists, covered with dust, highly combustible, and sort of loose or careless wiring throughout the barn.

Mr. Boyle: Objected to. No foundation laid for any extra testimony with relation to wires or anything pertaining to it. It is purely conclusion on the part of the witness. I move it be stricken.

The Court: I think that will go to the weight rather than otherwise for the present.

Q. Just describe what you saw.

A. That is what I saw.

Q. What else? Did you observe the condition of the floor of the hayloft?

A. Not particularly. I glanced up naturally, but I do not re- [156] call anything unusual about it. It was old.

Q. Did you observe the condition of the roof?

A. Yes, my recollection of that was that it needed painting and the shingles were curled in various places.

(Testimony of Howard Parish.)

Mr. Levit: That is all.

Cross-Examination

By Mr. Boyle:

Q. Mr. Parish, how long have you been handling the insurance business of Mrs. Cupit?

A. Since '35.

Q. Do you remember this particular transaction, in which Mrs. Cupit purchased the hay?

A. Yes.

Q. Do you remember when she first notified you on the matter of hay?

Mr. Levit: Will you pardon me. I overlooked a portion of testimony I intended to ask and counsel might want to cross-examine on it.

Mr. Boyle: Go ahead.

By Mr. Levit:

Q. Mr. Parish, do you recall you had a subsequent meeting with Mr. Questa in Reno after September 9th and before the fire that burned this barn?

A. Yes, I recall meeting Silvo, or Mr. Questa.

Q. Where did you meet him?

A. Well, that I wouldn't be positive about. Mr. Questa drops into my office occasionally for notary work. It might have been there or might have been on the street.

Q. And do you recall any conversation with him at that time [157] about insurance on the barn?

A. Yes, I questioned him. I said, "Did you ever write the insurance on the barn?"

(Testimony of Howard Parish.)

Q. What was his answer?

A. No.

Q. You mean his answer was no?

A. No.

Q. Mr. Parish, can you fix the date of that conversation?

A. No.

Q. Well, within limits? Do you know whether it was before or after September 9th?

A. It was before September 9th.

Q. Before you had been out to the ranch?

A. Pardon me. It was after September 9th, that's right.

Q. Now do you recall when this barn burned?

A. Late in September. I don't recall the exact date.

Q. But you do recall the occasion?

A. Well, I certainly do, yes.

Q. And do you recall whether this conversation that you spoke about was before the barn burned?

A. Oh yes.

Q. So that it was between September 9th and September 20th, which was the date of the fire?

A. Yes sir. That is right.

Cross-Examination

By Mr. Boyle:

Q. Now with reference to the hay. Do you remember when Mrs. Monaei Lindsay came to you with reference to insuring the hay?

A. She didn't come in to see me. [158]

(Testimony of Howard Parish.)

Q. She phoned you?

A. Phoned me.

Q. What date did she phone you?

A. On the 15th of August.

Q. Do you remember at that time whom she had purchased the hay from?

A. She stated she had purchased some hay at the Questa ranch and would I insure it.

Q. Did she state the date she purchased the hay?

A. No sir.

Q. You don't know anything about the date she purchased the hay?

A. No sir.

Q. And you don't remember the fact that a visit was made to Mr. Questa's ranch by you and Mr. Carico in July of 1941?

A. No such visit was made.

Q. Wasn't it a matter of fact that a visit was made and hay was purchased at that time by Mrs. Cupit from Mr. Carico at that time and you went out to insure the hay?

A. You are confused as to names in the first place. She didn't purchase any hay from Carico.

Q. I said you and Mr. Carico went to the ranch when the hay was purchased out there?

A. No.

Q. As a matter of fact, didn't you go and ask Mr. Questa what the price of that hay was?

A. No sir.

Q. You didn't go to the ranch during July at all?

(Testimony of Howard Parish.)

A. No sir. [159]

Q. During the month of July wasn't it a fact that Mrs. Monaei Lindsay Cupit had purchased hay from Mr. Questa and entered into a contract in writing pertaining to it? A. I don't know?

Q. Wasn't it a matter of fact that at that time she was told to have insurance put on the hay because it was to be put in the barn and insisted by Mr. Questa that the barn ought to be insured also?

A. I wouldn't know about that.

Q. Did you ever, during the month of July, 1941, in conversation with Mr. Questa at the ranch, ask him the price of the hay?

A. I don't recall that at all.

Q. Did you not at that time in 1941, when you were asking the price of hay, state there was not enough insurance on the hay and that more insurance should be put on it?

A. I don't recall discussing values with Mr. Questa at all on any hay.

Q. You have had considerable business with Mrs. Cupit, have you not, in the insurance line?

A. That is right.

Q. Is it not customary for her to attend to matters of insurance at once?

A. It is a custom.

Q. You are familiar with Mrs. Cupit's signature, are you not? A. Yes.

Q. You are familiar with that particular signature? A. That is right.

(Testimony of Howard Parish.)

Mr. Boyle: We offer this particular document for iden- [160] tification and ask it be marked for identification.

Clerk: Plaintiffs' H for identification.

Mr. Boyle: No further examination.

Redirect Examination

By Mr. Levit:

Q. Mr. Parish, defendant's exhibit——

Mr. Boyle: It is not an exhibit, only for identification.

Mr. Levit: Oh yes it is. It is Exhibit No. 5.

Q. ——shows date August 27, 1941——

Mr. Boyle: I beg your pardon.

Q. ——is that correct? A. Right.

Q. Is that the date on which this cover note, requested by you of Eby & Company, was issued by them?

A. That is the date it was requested, but I asked coverage be placed as of August 15th.

Q. But the cover note was actually requested by you on August 27, 1941?

A. That is correct.

Q. What date was it, if you remember, when Mrs. Cupit requested you to insure this?

A. August 15th.

Q. And you got cover note on August 27th?

A. That is right.

Q. And dated it back to August 15th?

A. Exactly.

Q. Did you go out to the Questa ranch prior to

(Testimony of Howard Parish.)

August 27th, the date on which this cover note was issued? [161] A. No.

Q. At any time? A. No.

Q. That was the first time you had ever been there?

A. Wait a minute. In past years I have been there, but not during any period immediately prior to the issuance of this cover note and regarding this transaction.

Q. Well, let me ask you this—do you remember how long it was before August 27, 1941 that you had been out to the Questa ranch?

A. Oh, I don't recall; it was several months.

Q. When you say several months, would it be in 1941 do you think? A. I don't think so.

Q. You think before 1941? A. Yes sir.

Q. Did you on that occasion go out there to discuss any insurance relative to Mrs. Cupit or Mrs. Lindley? A. No sir.

Mr. Levit: That is all.

Mr. Boyle: That is all.

The Court: We will take our usual 10-minute recess at this time.

(Recess taken at 11:08)

11:16 A. M.

The Court: Proceed.

MR. JOHN F. HICKOK,

a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Levit:

Q. State your full name? [162]

A. John F. Hickok.

Q. Where do you live? A. Reno.

Q. How long have you lived in Reno?

A. Between four and five years.

Q. Where did you live before that?

A. In California, southern California.

Q. For how long? A. Around five years.

Q. And before that?

A. Tulsa, Oklahoma.

Q. How long did you live in Tulsa?

A. About eight years.

Q. What is your business, Mr. Hickok?

A. I am a real estate salesman and broker.

Q. How long have you been in the real estate business? A. About 15 years.

Q. And in what places?

A. Here, in California, and Oklahoma.

Q. Now are you familiar with the types and classes of buildings in Reno and its vicinity?

A. Yes.

Q. And with the sales and purchase and the prices of property in this vicinity? A. Yes.

(Testimony of John F. Hickok.)

Q. Does that include both farm and city property? A. Yes.

Q. And you sell both types? [163]

A. Yes.

Q. Are you familiar with the basis on which loans are made in Reno and the vicinity of Reno?

A. Yes.

Q. Now have you done any appraisal work, Mr. Hickok, of real estate? A. Yes, I have.

Q. Here in Reno and around Reno?

A. I have done some here.

Q. What about elsewhere?

A. I did a great deal in Oklahoma, in Kansas, and parts of Texas.

Q. And are you familiar with barn buildings and farm buildings generally? A. Yes sir.

Q. The types of buildings that are used for barns here and around this vicinity?

A. Yes.

Q. Now during the time you were in the real estate business in Tulsa, did you do some appraisal work?

A. Yes, I appraised for the American National Insurance Company of Galveston, I appraised for their loans. I appraised properties that they loaned money on through Kansas, Oklahoma, and parts of Texas.

Q. Did that include both rural and city property? A. Yes.

Q. Now are you familiar with the market values

(Testimony of John F. Hickok.)

of property in this vicinity and the rate at which it would normally depreciate? A. Yes. [164]

Q. You have been sitting in court yesterday and today during all the testimony that has been given in this case, have you not? A. Yes.

Q. And you have heard discussion about a barn on the Questa ranch. Now, having in mind that barn of Mr. Questa's, Mr. Hickok, as you have heard it described, having in mind its age of approximately 35 or 40 years, and having in mind the type of construction, and assuming that it was reasonably well kept up, what, in your opinion, would be the amount of depreciation on that barn as of September 20th or 21st, 1941, as compared with its reproduction cost, whatever that reproduction cost might be?

A. I would say a barn 35 to 40 years old would have depreciated possibly from 75 to 80 per cent, as compared to a new structure that was new September last year.

Mr. Levit: That is all.

Cross Examination

By Mr. Boyle:

Q. Mr. Hickok, do you hold yourself out as an expert on building construction?

A. I consider myself very well informed on building construction.

Q. Did you ever study architecture?

A. No.

Q. Did you ever study engineering?

(Testimony of John F. Hickok.)

A. No.

Q. Do you know anything about specific gravity of materials? A. No.

Q. Do you know anything about concrete?

A. Yes.

Q. All right. You heard the testimony in this court to the [165] effect that the floors were ripped up and that under each column was placed concrete and around the various piers or posts, as they call them. You heard the dimensions of the concrete in depth, and also in thickness. Now what effect would concrete have upon a post as to its underpinning?

A. Well, concrete is a perfect underpinning for posts, providing it is protected properly.

Q. Then if a person would undertake to tear the entire flooring out and undertake to put the concrete of the dimensions that were put under those posts in, it would have restored that building almost to its original status as to a substantial building, would it not?

A. No; it would keep the building from falling down, which possibly would have happened had that not been done.

Q. Now in relation to the falling down part—you know what 10 x 10 piece of lumber is, do you not? A. Yes.

Q. It can become very dry, can it not?

A. Yes.

Q. And at the same time it can be very strong?

A. Yes.

(Testimony of John F. Hickok.)

Q. If it is 10 x 10, it is just as good as any 4 x 4 or 6 x 6 today, wouldn't it be?

Mr. Levit: I think the question is unintelligible.

Mr. Boyle: We are talking about the particular posts in that building. You examined him about present building and that is what I am examining him about.

Mr. Levit: There is no testimony as to the condition [166] of the posts.

Mr. Boyle: You said the condition of the barn. You can't take one part and leave out the rest. You are talking about the entire building and I am talking about the condition of its parts that go to make up the structure and then I can go to the rest of it and show the barn is in perfect condition.

The Court: We can argue those matters later.

Mr. Levit: I will withdraw my objection.

The Court: Proceed.

Q. You did not see the braces in the building; in fact, you did not see any part of it?

A. That is right.

Q. But you heard testimony here by Mr. Williams? A. Yes.

Q. If Mr. Williams had been in the building construction business for thirty years, you would presume he knew more about the business than you did, would you not?

Mr. Levit: Objected to as calling for conclusion of the witness, not proper.

Mr. Boyle: If the man knows, your Honor. No-

(Testimony of John F. Hickok.)

body would know better than himself. It certainly wouldn't be conclusion.

The Court: I will permit the question.

(Question read.)

A. Not necessarily. I have seen many very fine old carpenters who are very far off in their estimates of cost of construction. That is what we run into in the loan business and we run into that frequently. A carpenter is a very good mechanic but not a [167] good estimator.

Q. How about a contractor, wouldn't a contractor be a good estimator?

Mr. Levit: Same objection.

The Court: Same ruling for the present.

A. Some contractors are good estimators and some aren't.

Q. You did not see this building at all?

A. No.

Q. The fact is, according to your testimony, when you said a building would depreciate 75 to 80 per cent, did you take into consideration that the building had been underpinned with a foundation under all the columns and on the outside?

Mr. Levit: Their own contractor testified, your Honor, it wasn't that kind of job.

The Court: I will permit the question. Read the question.

(Question read.)

A. That would possibly cut down the amount of

(Testimony of John F. Hickok.)

depreciation to some extent; it undoubtedly would, but it would not make it the same as a new building. We have that in many cases right here in Reno in the older homes that are 40 to 50 years old. The original foundation was made out of lime and sandstone and in order to keep them from absolutely tipping over, a new foundation has to be put under the building. However, it is still an obsolete building and will not bring on the market 60 per cent, 40 per cent, sometimes not 25 per cent of the original cost of construction, even with a new foundation.

Q. Referring to a barn, how does a barn become obsolete? [168]

A. All buildings become obsolete.

Q. Obsolete means no longer in use, not efficient. That being the case, how does a barn that stores hay and onions and other materials to keep them from the weather become obsolete?

Mr. Levit: We object. That is founded upon a definition assumed by counsel and the definition is worked into the question as a statement of fact, and I think the question therefore is improper cross-examination.

Mr. Boyle: We could eliminate my description of obsolete, which by the way is correct.

Mr. Levit: I do not think it is.

The Court: I think the question should be modified.

Mr. Boyle: We will strike it.

(Testimony of John F. Hickok.)

Q. How does a barn become obsolete when it fulfills all requirements of storing hay, storing onions, and housing cattle and horses if necessary?

Mr. Levit: That assumes facts not in evidence. As a matter of fact, at the time of the fire it was not in shape for storing cattle, horses, or hay, because there were no pillars in the hayloft for the hay, except on the ground floor, and I think the question is improper.

Mr. Boyle: I asked about the barn in general, testing his credibility as an expert as to whether or not——

The Court: Probably the question goes to the weight.

A. The only way I can answer that question is by this comparison. If there are two pieces of ground, say, of 80 acres each, where the soil is similar, or we will say exactly the same if they adjoin each other; one 80 acres has improvements that were built [169] in 1941, the other 80 acres has improvements that were built in 1900. If a purchaser is taken out and shown both properties adjoining each other and there is no question of soil, you could add at least 70 per cent of the cost of the new structures to the value of the 80 acres that has the new improvements on it, because the old improvements, that were 40 years old, would be considered out of date and not of much actual physical value. While that might keep the rain off from you, you might be able to sleep in that,

(Testimony of John F. Hickok.)

you might be able to put hay in that, but that would not have a true value of the amount of the new structure.

Q. Is it customary, in your experience, such as you have testified to, in appraising various buildings and also dealing in real estate, for a farmer, who has an old barn, to tear it down and put up a new barn when it meets all his requirements?

Mr. Levis: Objected to as not proper cross-examination.

The Court: I will permit the question. It goes to the weight.

A. I have seen that done in some cases but it is not the usual procedure.

Mr. Boyle: That is all.

Mr. Levit: That is all. Counsel, will you stipulate that the work on these concrete pillars was done in the year 1938 or 1939 and the cost in all was not more than \$500.00?

Mr. Boyle: With the labor of his crew.

Mr. Levit: With the labor and everything. I would like to recall Mr. Questa for one point.

MR. QUESTA,

having been previously sworn, testified as follows:

[170]

Recross Examination

By Mr. Levit:

Q. Mr. Questa, these cement pillars you put in

(Testimony of Silvo Questa.)

under the posts in the barn were put in in the year 1939, weren't they? A. I believe so.

Q. And the total cost, including material and labor, was around four or five hundred, was it not?

A. No.

Q. How much was it?

A. There was a contract and the cement and rock and sand. We hauled the rock. That was for the cement and not the labor.

Q. That does not cover the labor? A. No.

Q. Now you remember in January, when you gave me that statement in Mr. Boyle's office, I asked you these questions and you gave these answers:

“Q. Did you do any work on the barn?

“A. I would say.

“Q. What did you do on it?

“A. I put in all them cement pillars under it, had it all straightened.

“Q. Did you do the work yourself or have it contracted?

“A. I had it contracted.

“Q. Who did the work?

“A. One of the boys is dead and there is still one living.

“Q. What were their names?

“A. Joe Barbagola. [171]

“Q. When was that work done?

“A. Done in the summer of '38 or '39.

“Q. How much did you spend on it at that time?

(Testimony of Silvo Questa.)

“A. I couldn’t remember really.

“Q. Well can you give me an approximation?

“A. Around four or five hundred, between four and five hundred.

“Q. That is in all, including the material?

“A. Well, that is the labor, not counting my men as labor. I can remember I paid them so much a day, five dollars a day, I think, five or six dollars a day, yes six dollars a day, they board themselves, and I bought sand and gravel and had my men haul the rocks.

“Q. Did this figure of four or five hundred include that?

“A. Yes, that will about catch it.

“Q. That will about cover the whole thing. Did you do any other work on it?”

And then you went on and told what other work you did. Do you recall so testifying?

A. Yes.

Mr. Levit: That is all. Defendant rests.

Rebuttal Testimony

MRS. QUESTA,

having been previously sworn, testified as follows:

By Mr. Boyle:

Q. Mrs. Questa, did any note or binder come to you down on the [172] ranch?

(Testimony of Mrs. Jennie Questa.)

Q. Was any policy delivered to you by Mr. Yori?

A. There was a policy delivered in August by Mark Yori, Jr.

Q. August, 1941?

A. Well, it was right after the house was constructed, just finished.

Q. And that was in August or July?

A. The house was finished in July, the 4th, and he come in August.

Q. Were the policies delivered to you or did they come by mail?

A. He delivered them to me, Mark Yori, Jr.

Q. Did Mr. Hassett come to the ranch in July at any time? A. No.

Q. If he testified that he came to the ranch, you didn't see him there at the ranch at any time?

A. I didn't see him.

Q. If he had come to the ranch, would you have seen him?

A. I was at the old house. He might have come to the new house. It seems to me he did come, but I didn't pay much attention. I was living at the other house.

Q. Do you recollect Mr. Howard Parish coming to your ranch? A. Yes.

Q. Did he come with Mr. Corica?

A. He had a man with him, yes.

Q. Do you remember the month he came to your ranch? A. In July.

(Testimony of Mrs. Jennie Questa.)

Q. July of 1941. How long after was it concerning the proposi- [173] tion of hay purchased by Mrs. Cupit?

A. Well, Mr. Questa said the hay was purchased—I can't say.

Q. It says here the hay was purchased on July 3, 1941.

Mr. Levit: It doesn't say that, as I recall it, Mr. Boyle.

A. The hay was purchased by Mrs. Cupit and Mr. Questa told me Mr. Parish was going to insure this hay, was coming down.

Q. Do you remember the month Mr. Corica and Mr. Howard Parish came to the ranch?

A. In July.

Q. Of 1941?

A. Yes, and I was living in the stone house. They drove right up to the house there.

Q. Did you have any conversation with them?

A. I asked them what they wanted. He says, "I want to insure Mrs. Lindley's hay. Where is Mr. Questa?" I said, "Around the ranch." He was very busy.

Q. Was he tinkering on any pipes when they came? A. No sir.

Q. Do you know where Mr. Questa was?

A. He was haying and I know he was busy with some of the men around and I said, "I will look around and see" and finally I saw him, so I went back in the house.

(Testimony of Mrs. Jennie Questa.)

Q. In July of 1941 was the barn or not filled with hay? A. It was filled with hay.

Q. Was it possible to see any cobwebs and things of the kind described here today?

A. There might have been a few, generally old buildings have [174] some, but not to amount to anything, because we were using that barn all the time, storing everything in there.

Q. Was there or not many cobwebs?

A. No, there wasn't many.

Q. Now with relation to the time that Mr. Parish said he came to the ranch, do you remember him coming with Mr. Corica any time in the month of July or any other time in July? A. No sir.

Q. If they had come, would you have seen them?

A. Yes.

Mr. Levit: Objected to; that calls for conclusion.

Q. Were you there all the time?

A. All the time. I never left that ranch.

Mr. Levit: Still objected to on the same ground.

(Question read.)

The Court: I think the objection goes to the weight.

Mr. Boyle: You may cross-examine.

Mr. Levit: No cross-examination.

MR. QUESTA,

having been previously sworn, testified as follows on rebuttal:

By Mr. Boyle:

Q. You heard the testimony in this court room pertaining to meeting you in Club 116 in Reno, Nevada, by Mr. Hassett, did you not? A. Yes.

Q. Did you ever meet Mr. Hassett in Club 116 in Reno, Nevada? A. Yes.

Q. What month was it that you met him in Club 116? [175]

A. I met him on January 26th, early in the evening. I walked in there with Mr. Rudy and Mr. Hassett and Mr. Levit were standing at the bar.

Q. Did you see him on July 27, 1941, in Club 116 at Reno, Nevada?

A. Not that I remember.

Q. If you had seen him you would have known it, would you not?

Mr. Levit: Objected to as leading.

The Court: I can't see it is leading.

Q. Well, would you have or not?

A. I would if I had saw him.

Q. Now in relation to telling Mr. Hassett about insurance for four thousand dollars in the presence of the young lady here by the name of Miss Porta—— A. Could I go on?

Q. I will withdraw the question. You may continue on.

A. We had a drink at 116 and Frank wanted to

(Testimony of Silvo Questa.)

go to Club Fortune and he wanted to buy a drink, so all three of us went.

Mr. Levit: To the Club Fortune, didn't we?

A. That is right.

Mr. Boyle: Don't ask any questions; let him testify.

A. And Mr. Levit left and that is when Frank Hassett told me to be patient for three days.

Mr. Levit: What date was that?

A. January 26th.

Mr. Levit: 1942?

A. Yes.

Q. (Mr. Boyle) Now, Mr. Questa, did you ask Mr. Parish and Mr. Corica about insurance rates at any time, pertaining to the barn, [176] yes or no.

A. No.

Q. Did you or did you not ask Mr. Corica or Mr. Parish, during the month of September, about insurance? A. No.

Q. Did Mr. Corica and Mr. Parish come to the ranch in Glendale during the month of September or August of 1941? A. No.

Q. Do you remember seeing Mr. Corica and Mr. Parish on the ranch at any time during 1941?

A. Yes.

Q. Do you remember the date, or thereabouts, that they came to the ranch? A. Yes.

Q. During what month? A. July.

Q. How do you fix the month of July as the month they were there?

(Testimony of Silvo Questa.)

A. I sold Mrs. Cupit all the hay that was in the barn. I also sold her a field of hay that was standing on the northeast corner of the ranch, and I sold her this hay and we wrote up a contract on July 3rd.

Q. I show you a certain instrument and ask you if that is the instrument which was written up?

A. Yes.

Q. Was that instrument signed by Mrs. Cupit?

A. Yes.

Q. Are you familiar with her signature?

A. Yes. [177]

Q. Did you or did you not sign a similar document? A. Yes.

Q. I show you also another document and ask you if you signed that? A. Yes.

Q. Did you give her a copy of it? A. Yes.

Mr. Levit: May I see it?

Mr. Boyle: We would like to offer this particular document in evidence, the one signed by Mr. Questa, and the other one for identification, and ask they both be made one exhibit.

Mr. Levit: No objection.

The Court: They may be admitted.

(Document signed by Monaci Lo Cupit and Silvo Questa marked Plaintiffs' "H" and document signed by Monaci Lo Cupit only marked Plaintiffs' "H" for identification.)

Mr. Boyle: I will read this particular document:

(Testimony of Silvo Questa.)

PLAINTIFFS' EXHIBIT H

“Reno, Nevada,
July 3, 1941

“Mr. Silvo Questa
Glendale, Nevada

This is confirm our verbal agreement whereby I agreed to purchase and you agreed to sell to me all of your last year's crop of hay amounting to sixty (60) tons more or less, which is now stored in your barn on your ranch near Glendale, and to pay you therefor the sum of Fifteen Dollars (\$15.00) per ton; delivery to be taken by me at your ranch.

“I also agree to purchase all of your this year's crop of hay still uncut from the pasture on the northeast corner of your ranch which it is now estimated will amount to approximately seventy (70) tons more or less, and to pay you therefor the sum of Fifteen Dollars (\$15.00) per ton; delivery to be taken by me [178] at your ranch. The hay, however, to be cut and baled by you at your expense, and such hay to be ready for delivery to me not later than August 10th, 1941.

“I further agree that payment for the above described hay shall be made by me to you as follows:

“\$500.00 upon your acceptance of this agreement;

(Testimony of Silvo Questa.)

“\$500.00 on or before the 3rd day of August, 1941;

“And the remainder of said purchase price on or before the 3rd day of October, 1941.

“Very truly yours,

“MONOEI LO CUPIT

“Glendale, Nevada,

July 3, 1941

“I hereby agree to sell the above described hay upon the terms and under the conditions above mentioned.

“SILVO QUESTA.”

(Printer's Note: Plaintiffs' Exhibit H for identification is same as above except that document was not signed by Silvo Questa.)

Q. Now is this the agreement that was entered into between you and her? A. Yes.

Q. And that was the agreement signed by you?

A. Yes.

Q. What money was paid to you and give the dates if you recollect.

A. Well, I can't recollect. She paid me some money at first.

Q. How much did she pay you?

A. \$500.00 it says there.

Q. Was that paid upon July 3rd?

A. Yes.

Q. And then did she pay you some more money?

A. Yes.

(Testimony of Silvo Questa.)

Q. When did she pay it?

A. Right along. [179]

Q. Was that in the month of August or before?
It says here, "\$500.00 on or before the 3rd of August."

A. Yes, she paid right when the dates came.

Q. Did you have any discussion on insurance pertaining to this particular hay at any time with Mrs. Cupit or her representatives?

Mr. Levit: Objected to as incompetent, irrelevant and immaterial.

Mr. Boyle: It all goes to testimony of the time.

Mr. Levit: I have no objection to dates.

A. Yes, after this agreement was drawn up, the next day, she sent her man to haul some hay by truck at Glendale, so I saw him and I told him, I said, "You tell your boss over there that she better carry insurance on this hay."

Q. How long after that, if you recollect, did anybody come to insure it?

A. Inside of three or four days Mr. Parish and that other young man came to the ranch.

Q. When did they start to haul hay?

A. The fourth of July.

Q. Then you fix it being three days after, you fix that about the 7th that Mr. Parish and Mr. Corica came to the ranch?

A. Yes.

Q. In relation to the barn and the hay therein during the month of July, how much hay was in the barn?

(Testimony of Silvo Questa.)

A. There was just a runway. There is a runway that you can drive, go in right through, and the hay on the left side was full from end to end, clean to the ceiling; you could look right up to the ceiling, and to the right, which would be the west, there [180] was hay on that side, but not all the way, just in one big pile there was hay to the west side, but not all the way. She was empty about three-fourths of the way, not quite three-fourths of the way, on the west side going north.

Q. During the month of September that Mr. Parish said he was there, before the 9th day of September, was there or not, according to his testimony, 70 ton of hay left in the barn?

A. They had been hauling hay since July.

Q. Just answer the question.

(Question.)

A. No.

Q. How much was there in the barn, if you recollect?

A. Well, on September 20th, when it burned down, there was about 10 ton of hay of Mrs. Cupit's left in the barn.

Q. What would you approximate about the number of tons about the 7th day of September, if you recollect?

A. Maybe about twenty ton.

Q. Now was there any hay outside belonging to Mrs. Cupit?

(Testimony of Silvo Questa.)

A. No, it wasn't cut yet, that field wasn't cut yet.

Q. Then the hay she owned outside was still in the field in September, 1941?

A. In September yes, the hay that was supposed to have went to Mrs. Cupit after she hauled this hay from the barn and the barn burned down, she didn't take any more hay because she said before she had too much hay, that she couldn't handle that field down there.

Q. Then she didn't take the contract?

A. No. [181]

Q. The hay was never cut, was it?

A. It was cut and I stored it up myself.

Q. Where did you store it?

A. I stored it outside while she got her hay out and then I had a man hauling hay in the barn three or four days before the barn burned, 900 bales of hay.

Q. During the month of September did you call Mr. Parish's attention to any hay belonging to Mrs. Cupit? A. What month?

Q. I am talking about September, before the 9th of September, did you have any discussion with him about hay outside the barn?

A. No.

Q. During the month of July, 1941, did you have any discussion with him about hay outside the barn?

A. No, not outside the barn.

(Testimony of Silvo Questa.)

Q. Then the only discussion you had was about hay inside the barn? A. That is right.

Q. Did you have any conversation with Mr. Parish? A. Yes.

Q. About what date and who was present?

A. About the 7th of July I guess.

Q. Who else was present, if any one?

A. Parish and that young fellow, Corica.

Q. And that was where? A. In the barn.

Q. Go ahead.

A. They asked me what I was getting for this hay. I said, "I [182] am getting \$15.00. Mr. Parish said to Mr. Corica, "I told you that you didn't insure it for enough."

Q. Was there any further conversation?

A. That is all.

Q. Have you anything else you want to say?

A. No.

Mr. Boyle: That is all.

Mr. Levit: That is all.

Mr. Boyle: We rest.

Sur-Rebuttal

MR. PARISH,

having been previously sworn, testified as follows:

By Mr. Levit:

Q. Mr. Parish, you heard the testimony of Mrs. Questa that when you came to the ranch you talked

(Testimony of Howard Parish.)

to her. Did you on this occasion of your visit to the ranch, in relation to the Cupit hay insurance, see Mrs. Questa or talk to her? A. No sir.

Q. When you drove to the end of the ranch, did you drive up to the house?

A. Toward a building I think they were using that as a dwelling, on the left hand side of the car, would be east, of a large building that I noticed there.

Q. How did you locate Mr. Questa?

A. I saw him out in the yard with gun boots on.

Q. Did you talk to anyone else before you saw Mr. Questa? A. No sir.

Q. You observed Mrs. Questa in the courtroom today, did you not? A. Yes sir. [183]

Q. Have you ever seen her before?

A. Not that I recall.

Q. Now you heard the testimony of Mr. Questa, as to the date on which this visit of yours took place. Do you wish to make any change in your testimony as to the date on which this visit to the ranch took place? A. No sir.

Mr. Boyle: We object as not being sur-rebuttal. Sur-rebuttal must be denial and that is purely argumentative.

Q. After hearing the testimony of Mr. Questa, to the effect that your visit to the ranch took place early in July, if you were asked now the same question as you were asked——

(Testimony of Howard Parish.)

Mr. Boyle: Objected to, as not sur-rebuttal.

Mr. Levit: Do you want me to ask all the questions over again.

The Court: I will permit the question, subject to the objection.

Q. After hearing the testimony of Mr. Questa a moment ago as to the fact that the date on which you visited the ranch was July 7th, if you were now asked by me the same questions I asked you earlier this morning, as to the date on which you visited the Questa ranch and had the conversation about the Cupit hay, would your answers be the same? A. Yes sir.

Q. Are you certain of the date on which you were there? A. I am.

Mr. Boyle: Same objection.

The Court: Same ruling. [184]

Q. What was that date?

A. September 9, 1941.

Q. Were you there in July or August or on any other occasion, for the purpose of considering the insurance on the Cupit hay? A. No sir.

Q. Did you have any knowledge of any insurance on the Cupit hay prior to the 15th of August, 1941? A. No sir.

Mr. Boyle: That is not sur-rebuttal.

Mr. Levit: It is too.

The Court: I will permit the answer, subject to the objection.

A. No sir.

(Testimony of Howard Parish.)

Mr. Levit: That is all.

Mr. Boyle: That is all.

Mr. Levit: We rest, your Honor.

The Court: This case presents questions of law at least with which the Court has no had any other similar case to deal with. I would like to have the transcript of the testimony and the matter fully submitted on briefs or briefs and oral argument later, as I have some other cases ahead of it that I feel I must dispose of in advance.

Mr. Levit: What time would you suggest, your Honor, on the briefs?

The Court: Well, after the transcript is submitted, I would like to have counsel, if they could, [185] agree on time for briefs, plaintiffs to open.

Mr. Boyle: How about 10-15-10?

Mr. Levit: That is satisfactory. We feel your Honor that the case should, after the briefs have been submitted, should be argued.

The Court: The Court will consider that. That will be the order then for the present.

Mr. Levit: Cost of transcript to be split?

The Court: That will be divided. We will consider oral argument afterward. In all probability the Court will grant it.

(Court adjourned at 12:00 o'clock.) [186]

State of Nevada,
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, in and for the District of Nevada, do hereby certify: That I took verbatim shorthand notes of the testimony adduced and the proceedings had at the trial of the case entitled, "Silvo Questa and Jennie Questa, husband and wife, Plaintiffs, vs. Milwaukee Mechanics' Insurance Company, a corporation, Defendant," No. 199, held in Reno on the 23rd and 24th days of June, 1942, and that the foregoing pages, numbered 1 to 186 inclusive, constitutes a full, true, and correct transcript of my shorthand notes, to the best of my knowledge and ability.

Dated at Carson City, Nevada, this 1st day of July, 1942.

MARIE D. McINTYRE
Official Reporter

[Endorsed]: Filed July 3, 1942.

[Endorsed]: No. 10360. United States Circuit Court of Appeals for the Ninth Circuit. Milwaukee Mechanics' Insurance Company, a corporation, Appellant, vs. Silvo Questa and Jennie Questa, husband and wife, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed February 5, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10360

MILWAUKEE MECHANICS' INSURANCE
COMPANY, a corporation,

Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA, hus-
band and wife,

Appellees.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL AND DESIGNATION
OF RECORD TO BE PRINTED

To Paul P. O'Brien, Clerk of the above entitled
Court, and to Silvo Questa and Jennie Questa,
Appellees above named, and to William S.
Boyle, Esquire, Attorney for Appellees:

Now Comes appellant above named and files this
statement of points upon which it intends to rely
on the appeal herein, and makes the following desig-
nation of the record which it thinks necessary for
the consideration thereof:

I.

POINTS

1. The judgment is not supported by the find-
ings of fact and conclusions of law made by the trial
court:

a. The findings and conclusions are conflicting, ambiguous, and uncertain as to the amount of insurance called for by the alleged oral contract of insurance;

b. The findings and conclusions are conflicting, ambiguous, and uncertain as to the amount of loss and damage sustained by appellees by reason of the alleged fire;

c. There is no finding of the actual cash value of the property alleged to have been insured at the time of its alleged destruction by fire.

2. The evidence is not sufficient to support the following findings, and each of said findings is clearly erroneous:

a. That an oral contract of insurance was entered into or existed between appellant and appellees;

b. That the amount of insurance called for by the alleged oral contract of insurance was the sum of \$4,000;

c. That appellees applied to appellant for insurance in the sum of \$4,000;

d. That appellees sustained loss or damage by fire in the amount of \$4,000.

3. The judgment is conflicting, ambiguous, uncertain, and invalid with respect to the existence of the alleged oral contract of insurance and the amount of insurance called for thereby, and with respect to the amount of loss and damage sustained by appellees by reason of the alleged fire.

4. The evidence is not sufficient to support the

judgment in the same respects that it is hereinabove in paragraph 2 specified to be insufficient to support the findings.

5. The trial court erred in denying appellant's motion to strike the testimony of appellee Silvo Questa as to the value and cost of reproduction of the property alleged to have been insured and destroyed by fire.

6. The trial court erred in denying appellant's motion to strike the testimony of witness Williams and Exhibits "B" and "E" relating to the cost of reproduction of the property alleged to have been insured and destroyed by fire.

II.

DESIGNATION

Appellant believes that for a proper consideration of the foregoing points the entire record of the trial is necessary, and designates the whole thereof for printing.

Dated: San Francisco, California, February 10, 1943.

LONG & LEVIT
HAWKINS, RHODES &
HAWKINS

Attorneys for Appellant.

(Duly verified.)

[Endorsed]: Filed Feb. 13, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION RE PRINTING OF RECORD

It Is Hereby Stipulated that the following Exhibits need not be printed, but may be considered by the Court in their original form:

Plaintiffs' Exhibits "A" and "A-1" (photographs);

Plaintiffs' Exhibit "B" (blueprints);

Plaintiffs' Exhibit "C" (fire insurance policy).

Dated: February 13th, 1943.

WILLIAM S. BOYLE

Attorney for Appellees.

LONG & LEVIT

HAWKINS, RHODES &

HAWKINS

Attorneys for Appellant.

So Ordered:

FRANCIS A. GARRECHT

Senior United States Circuit
Judge.

[Endorsed]: Filed Feb. 17, 1943. Paul P. O'Brien, Clerk.

No. 10,360

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit 2

MILWAUKEE MECHANICS' INSURANCE
COMPANY (a corporation),

Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA
(husband and wife),

Appellees.

BRIEF FOR APPELLANT.

PERCY V. LONG,

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Merchants Exchange Building, San Francisco, California,

Attorneys for Appellant.

LONG & LEVIT,

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153 N. Virginia Street, Reno, Nevada,

Of Counsel.

FILED

APR 15 1943

PAUL P. O'BRIEN,

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No. 10,360

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MILWAUKEE MECHANICS' INSURANCE
COMPANY (a corporation),
Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA
(husband and wife),
Appellees.

BRIEF FOR APPELLANT.

JURISDICTIONAL STATEMENT.

This is an action at law brought by appellees in the District Court of the United States for the District of Nevada, to recover \$7500 under an alleged oral contract of fire insurance between appellees (citizens of Nevada) as assureds, and appellant (a Wisconsin corporation) as insurer. The appeal is from final judgment rendered in favor of appellees for \$4000, after trial.

Jurisdiction of the District Court rests upon 28 *U. S. Code*, Sec. 41; and of this Court upon 28 *U. S. Code*, Sec. 225.

STATEMENT OF THE CASE.

a. The Pleadings.

The complaint alleges that on August 1, 1941, appellee Silvo Questa¹ applied to one Hassett, appellant's agent for fire insurance in the sum of \$7500 upon a barn belonging to appellees; and that appellant agreed to insure the barn from August 1, 1941, for three years, under the usual form of policy to be delivered within a reasonable time.² These allegations (except as to Hassett's agency for appellant) are denied by the answer.³

It is alleged that the barn burned on September 20, 1941, whereby appellees sustained a loss of \$7500.⁴ These allegations also are denied.⁵

The remaining allegations and denials are not of importance on this appeal.

b. The Evidence.

Briefly,⁶ Questa testified that on August 1, 1941, he met Hassett on the street in Reno and asked him to insure the barn for three years for \$7500, and Hassett verbally accepted the insurance; no one else was present at this conversation.⁷ He also testified to two subsequent conversations with Hassett before the fire con-

¹Appellees are husband and wife. For convenience, we shall refer to appellee Silvo Questa simply as "Questa".

²Complaint, IV; R 3.

³Answer, I; R 6.

⁴Complaint, V; R 3.

⁵Answer, II; R 6.

⁶The evidence is more fully considered hereinafter under the appropriate Specifications of Error.

⁷R 31-2.

cerning the insurance, one about the middle of August and the other about the last of August or early September;⁸ but he was very definite that no amount of insurance was mentioned at either of these last two meetings.⁹

Hassett testified that Questa first mentioned insurance on the barn about June 25, 1941, at which time Questa asked him to come out to the ranch for the purpose of insuring the barn. Hassett said he could not come out immediately and asked if Questa wanted him to hold the barn covered by insurance pending his visit to the ranch. Questa said No, that he preferred to wait until Hassett came to the ranch; no amount of insurance was mentioned by either Questa or Hassett.¹⁰ Hassett testified to subsequent conversations with Questa, but stated positively that at no time prior to the fire was there ever any discussion between them as to the amount of insurance that was to be placed on the barn.¹¹

Mrs. Questa testified that Hassett visited the ranch in the latter part of August,¹² but Questa was not at home and she and Hassett did not discuss insurance.¹³

Witnesses Parish and Corica, called by appellant, testified that on September 9th (eleven days before the fire) Questa told them that he did not have the

⁸R 34.

⁹R 77.

¹⁰R 153-5.

¹¹R 160.

¹²R 96.

¹³R 104-5.

barn insured.¹⁴ And Parish testified to a similar conversation with Questa between September 9th and the date of the fire.¹⁵ Appellant also called witness Porta to prove an admission by Questa, after the fire, that he knew he was not insured when the barn burned.¹⁶

Questa and appellees' witness Williams testified as to values and reproduction costs of the barn;¹⁷ appellant called witness Hickok as an expert on the extent of depreciation involved.

c. The Findings and Judgment.

The District Court, sitting without a jury, found that, on August 1, 1941, appellees applied to appellant for fire insurance on the barn *in the amount of \$4000*, and that appellant agreed to insure appellees *in that amount* for three years from that date.¹⁸ From this finding, the trial court concluded that an oral contract of fire insurance existed upon the barn *in the amount of \$4000*.¹⁹ The trial court also found that the barn was totally destroyed by fire, whereby appellees sustained loss to the amount of \$4000.²⁰ Judgment was rendered for appellees for \$4000.²¹

¹⁴R 190-2; 207-8. Questa and Mrs. Questa, in rebuttal, testified that this conversation took place in July.

¹⁵R 210-11.

¹⁶R 176-7.

¹⁷Appellant's motion to strike this testimony is considered hereinafter; see Specifications of Error VI and VII.

¹⁸Findings, IV; R 18-19.

¹⁹Findings (Conclusions of Law), R 20.

²⁰Findings, V; R 19.

²¹Judgment, R 21-2.

SPECIFICATION OF ERRORS.

I. There is a fatal variance between the contract pleaded as the basis of recovery and the contract found as the basis of the judgment. The complaint is based upon an alleged oral contract of fire insurance in the amount of \$7500,²² and it is this contract upon which recovery is sought. Contrary to the allegations of the complaint, the trial court found, and based its judgment upon, an oral contract in the amount of \$4000.²³ (See Argument, I.)

II. The judgment is not supported by the findings of fact and conclusions of law made by the trial court. *First*, the findings and conclusions are conflicting, ambiguous, and uncertain as to the amount of insurance called for by the purported oral contract of insurance, and do not disclose the terms of the contract on which the trial court based its judgment. (See Argument, II, 1.) *Second*, the findings and conclusions are conflicting, ambiguous, and uncertain as to the amount of loss by fire, in that there is no finding of the value of the barn allegedly insured and destroyed. (See Argument, II, 2.)

III. The evidence is not sufficient to support the finding relating to the existence and terms of the oral contract of insurance,²⁴ and such finding is clearly erroneous. (See Argument, III.)

²²Complaint, IV ; R 3.

²³Findings, IV ; R 18-19.

²⁴Findings, IV ; R 18-19.

IV. The evidence is not sufficient to support the finding relating to the amount of loss allegedly sustained by appellees as the result of fire,²⁵ and such finding is clearly erroneous. (See Argument, IV.)

V. The evidence is not sufficient to support the judgment in the respects referred to in Specifications III and IV, *supra*. (See Argument, III and IV.)

VI. The trial court erred in denying appellant's motion to strike the testimony of appellee Questa that the value of the barn was \$15,000;²⁶ the motion to strike was made upon the ground that Questa testified that this figure was replacement cost and not value, and that Questa was not qualified to testify as to replacement cost.²⁷ (See Argument, IV, 1.)

VII. The trial court erred in denying appellant's motion to strike the testimony of witness Williams relating to the replacement cost of the barn;²⁸ the motion to strike was made upon the ground that no proper foundation was laid for this testimony, that Williams did not have sufficient knowledge of the facts to justify the admission of his opinion testimony, and that his testimony was based on facts contrary to the admitted physical facts of the case.²⁹ (See Argument, IV, 2.)

²⁵Findings, V; R 19.

²⁶R 40, 87, 94.

²⁷R 40, 87, 94-5.

²⁸The motion was directed to all of the testimony of Williams (R 105-133, 172-5), and to Exhibits "B" and "E" prepared by him. Exhibit "E" (replacement estimate) is found in the transcript of record at pages 114-15. Exhibit "B" (blueprints) was admitted (R 113, last line), although by typographical error the transcript refers to it as Exhibit "E"; it has been transmitted in original.

²⁹R 130-2.

SUMMARY OF ARGUMENT.

Appellant's argument will be presented under the following points:

I. There is a fatal variance between the contract pleaded as the basis of recovery and the contract found as the basis of the judgment.

II. The judgment is not supported by the findings of fact and conclusions of law made by the trial court.

1. The findings and conclusions relating to the terms of the contract of insurance sued upon are conflicting, ambiguous, and uncertain.

2. The findings and conclusions relating to the amount of loss by fire are conflicting, ambiguous, and uncertain.

III. The findings of fact relating to the existence and terms of the oral contract of insurance are clearly erroneous.

IV. There is no competent testimony in the record supporting the finding relating to the amount of loss by fire. Appellant's motions to strike the testimony on values should have been granted.

ARGUMENT.

I.

THERE IS A FATAL VARIANCE BETWEEN THE CONTRACT PLEADED AS THE BASIS OF RECOVERY AND THE CON- TRACT FOUND AS THE BASIS OF THE JUDGMENT.

The contract alleged in the complaint is an oral contract of fire insurance in the amount of \$7500.³⁰ The trial court found an oral contract of fire insurance in the amount of \$4000.³¹ No amendment of the complaint was made or sought.

17 *CJS* (Contracts, Sec. 570) 1205:

“It is almost elementary that . . . plaintiff who declares on a special or express contract and proves a contract essentially variant from the one declared on, cannot recover . . . ; . . . the contract relied on must be established as pleaded”

It is hardly necessary to argue that the amount of insurance called for by an insurance contract is of the very essence of the contract. And where the variance is as to a material part or term of the contract, it is as fatal to plaintiff's case as a misstatement of the whole contract.

17 *CJS* (Contracts, Sec. 571) 1207-8.

Ordinarily, of course, an objection as to variance must be taken at the trial. But here there was absolutely no evidence offered at the trial tending to prove that a contract of insurance existed between the parties to this action for any amount other than \$7500. Questa testified that this was the amount agreed upon;

³⁰Complaint, IV; R 3.

³¹Findings, IV; R 18-19.

and Hassett, the only other person present when the contract was allegedly made, testified that there was no agreement to insure and that no amount whatever was either mentioned or agreed upon.³²

There was, therefore, no occasion during the course of the trial when appellant could have objected to a variance between pleading and proof. Under these circumstances, appellant may raise the issue of variance for the first time on appeal.

3 *CJ* (Appeal and Error, Sec. 720) 796-7:

“But the rule [that variance cannot be raised for the first time on appeal] does not apply where the objection could not have been obviated in the court below, or the evidence is such a departure from the allegations as to leave them unproved in their entire scope and meaning, or the judgment is based upon facts found or proved but not averred.”

To the same effect: 4 *CJS* (Appeal and Error, Sec. 282) 552.

³²The only mention of the figure of \$4000 is in the testimony of appellant's witness Porta, who testified that after the fire she overheard Questa say to Hassett (R 177): “. . . I told you three times to come out [to the ranch] and if you had come out there I would have [had] \$4000 insurance on the barn . . .”

This, however, is evidence that there was no insurance in force at the fire and that Questa knew it. It is certainly not evidence that there was an oral contract of insurance in the amount of \$4000, or any other amount. As was said in 3 *CJ* (Appeal and Error, Sec. 720, n. 86, par. i) 799:

“But where plaintiff seeks to recover upon a special contract he cannot depart therefrom in his evidence on the trial, and base his right of recovery upon the evidence of defendant, showing a different contract, and offered by him to contradict the evidence of plaintiff, and to disprove the alleged contract sued on. The rule which will support a finding upon an issue tried by consent outside of the allegations of the pleadings does not apply to such a case.”

II.

THE JUDGMENT IS NOT SUPPORTED BY THE FINDINGS OF
FACT AND CONCLUSIONS OF LAW MADE BY THE TRIAL
COURT.

Findings and conclusions are required by Rule 52, *FRCP*. They are intended to afford an understanding of the basis of the trial court's decision. They should be unambiguous, direct, and unequivocal.

Montgomery's Manual of Federal Appellate Jurisdiction and Procedure (4th Ed.) 411;

3 *Moore's Federal Practice* 3119;

Nordbye, Improvements in Statement of Findings of Fact and Conclusions of Law, 1 FRD 25, et seq.;

64 *CJ* (Trial, Sec. 1093) 1247-8:

“The essentials of findings of fact are that they should be clear, concise, intelligible, definite, certain, unequivocal, direct, positive and conclusive, and not be vague or evasive.”

There were two basic issues presented to the trial court. The first of these was: What were the terms of the oral contract of insurance, if any, on the barn? The second: To what monetary extent was the barn damaged by fire? We submit that it is impossible to read the trial court's findings, conclusions, and judgment (to say nothing of the “Memorandum Decision”³³) and ascertain a reasonably definite answer to either of these questions.

³³R 16-17.

1. The Contract.

Paragraph IV of the findings,³⁴ standing alone, is clear enough to the effect that appellees applied for \$4000 fire insurance on the barn, and that appellant agreed to insure it for that amount. But in the conclusions of law immediately following³⁵ it is stated:

“That an oral contract of fire insurance upon plaintiffs’ barn existed . . . and that the amount of insurance . . . covered by such oral contract *was a sum not less than \$4000 which amount the court concludes to be the amount so covered by such oral contract . . .*”³⁶

Similarly, the judgment³⁷ reads:

“That an oral contract of fire insurance existed upon plaintiffs’ barn . . . and that the amount of insurance . . . covered by such oral contract *was a sum not less than \$4000 . . .*”³⁸

The judgment for appellees cannot stand in the absence of a finding as to the terms of a contract between the parties. It is submitted that the proceedings shown by the record as having occurred after conclusion of the introduction of evidence and argument do not disclose in any satisfactory way what the

³⁴R 18-19.

³⁵R 20.

³⁶Italics in quotations are ours throughout.

³⁷R 21-2.

³⁸And, see the memorandum decision (R 16):

“ . . . It is the conclusion of the Court that the evidence is sufficient to establish an oral contract of fire insurance upon Plaintiffs’ barn which later was destroyed by fire and that the amount of insurance at that time, covered by such oral contract, was a sum not less than \$4000, which amount the Court finds to be the amount so covered by such oral contract . . . ”

contract was on which the trial court based its judgment.

It is well settled that the labeling of a finding of fact as a conclusion of law is of no significance, and that a judgment must stand if, taken as a whole, the findings of fact and conclusions of law, though mingled, support it.

O'Reilly v. Campbell, 116 US 418, 29 LEd 669, 670;

Compania Trans. De Petroleo v. Mexican Gulf Oil Co. (CCA 2) 292 F 846, 848.

It should follow that, unless the findings, conclusions, and judgment taken as a whole reasonably disclose the factual determinations necessary to support the judgment, the latter cannot stand.

2. The Amount of Loss by Fire.

Paragraph V of the findings reads:³⁹

“That . . . on about September 20, 1941, the said barn was totally destroyed by fire, whereby the plaintiffs sustained loss to the amount of \$4000.”

In the conclusions of law⁴⁰ it is stated:

“ . . . That the damage sustained by Plaintiff, by reason of said fire, was not less than such amount [\$4000].”

The judgment⁴¹ contains a recital in the same words as those last quoted, as does also the memorandum decision.⁴²

³⁹R 19.

⁴⁰R 20.

⁴¹R 22.

⁴²R 16.

The statement that appellees sustained loss or damage to the extent of \$4000 by reason of the fire is a conclusion of law.⁴³ The destruction of the barn may have caused loss or damage to appellees far in excess of the actual cash value of the barn, but this does not mean that appellant would have been liable under the (alleged) oral contract of fire insurance for more than such actual cash value. It is expressly provided in the standard fire policy prescribed by the laws of Nevada:⁴⁴

“This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused . . .”

In the absence of a finding of fact of the value of the property destroyed at the time of its destruction, it is submitted that the judgment cannot stand.

III.

THE FINDINGS OF FACT RELATING TO THE EXISTENCE AND TERMS OF THE ORAL CONTRACT OF INSURANCE ARE CLEARLY ERRONEOUS.

1. The Findings.

The trial court found:⁴⁵

“That on the 1st day of August, A. D. 1941, Silvo Questa for plaintiffs applied to Frank Has-

⁴³Cf., *Hubshman v. Louis Keer Shoe Co.* (CCA 7) 129 F2 137, 142.

⁴⁴Nevada Insurance Act (1941), Sec. 117. Such a policy was introduced in evidence by appellees as Exhibit “C” (R 42-3).

⁴⁵Findings, IV; R 18-19.

sett, Esq., who was then and there the duly authorized agent of the defendant, for insurance in the sum of \$4000 against loss or damage by fire upon a large barn . . . , the property of the said plaintiffs and the defendant, by their said agent, in consideration of the premises, which was to be the same rate as all other insurance held by plaintiffs with defendant to be paid defendant by plaintiffs, agreed to insure the plaintiffs on the said large barn . . . from the 1st day of August, A. D. 1941, for a space of three years and to execute and deliver to plaintiffs within a reasonable and convenient time their policy of insurance therefor in the usual form of policy issued by them insuring said plaintiffs' barn for the sum of \$4000 against loss and damage by fire."

2. Nature of Proof Required to Establish an Oral Contract of Insurance.

It is well settled by an overwhelming line of authorities that proof of the making of an oral contract of insurance must be clear and convincing.

American Can Co. v. Agricultural Ins. Co.,
12 CA 133, 106 P 720, 721:

"A parol contract of insurance may be made and is enforceable; but as such contracts are rarely made, and are not made in the usual and ordinary course of business, the proof of such oral contract must be clear and convincing . . . It is at once apparent, even to the layman, that in the somewhat unusual claim that an oral contract of insurance was entered into, the only safe and sound rule is to require the proof to be clear and convincing to the effect that the contract was actually entered into, that each party understood

it in the same light, and in regard to the same subject-matter.”

To the same effect:

Law v. Northern Assurance Co., 165 C 394, 132 P 590, 593;

Toth v. Metropolitan Life Ins. Co., 123 CA 185, 11 P2 94, 95;

Couch, Cyclopedia of Insurance Law, Vol. 1, p. 142; Vol. 8, pp. 7153-4;

1 *Cooley's Briefs on Insurance* (2d Ed.) 501-2, 530;

Annotations: 92 *ALR* 232, 236-7; 69 *ALR* 559, 565-8; 15 *ALR* 995, 1004-8.

3. Summary of the Evidence.

a. To establish the making of the contract, appellees rely entirely upon the testimony of Questa. Even if this testimony stood alone in the record, it would hardly suffice to furnish a satisfactory foundation for a finding that an oral contract was entered into, because of the many internal inconsistencies and contradictions it contains.

On *direct examination* Questa testified to the following events.

Conversation I with Hassett took place on August 1, 1941, on Virginia Street. He asked Hassett to insure the barn for three years for \$7500 in the usual form.⁴⁶ He also asked Hassett concerning insurance on a station wagon he had purchased from Brown

⁴⁶R 31-2.

Motors.⁴⁷ Hassett assured him “that he would insure the barn and that he would come down to the ranch to see the barn”.⁴⁸ “We both spoke about it being with the same company under the same conditions set forth in those policies issued by” defendant. He testified that Exhibit “C” (a fire insurance policy on his house) was the customary form of policy received by him from Hassett, and similar to other policies received from Hassett.⁴⁹

Conversation II was in the middle of August. “I again spoke to him about the insurance policy. All he said was that he would take care of it.”⁵⁰ Conversation III was in late August or early September, and Questa “asked him about the policy”. Hassett replied “I will take care of it; I will come down”.⁵¹

The barn in question had been insured by Questa in the early 1920’s, but he did not remember for what amount or in what company.⁵²

On *cross examination* Questa admitted that Exhibit “C” was the only policy he ever received from Hassett in that form before the fire.⁵³ He fixed the date of conversation I as a few days after his purchase of a car on July 25th; he did not think the conversation took place before August 1st.⁵⁴ He stated that he was “very sure” about the dates of his conversations with

⁴⁷R 32.

⁴⁸R 32.

⁴⁹R 42-3.

⁵⁰R 34.

⁵¹R 34.

⁵²R 59-61. See, also, R 89-90.

⁵³R 48.

⁵⁴R 58.

Hassett;⁵⁵ he admitted that he had talked to Hassett before he purchased the car, but not about insurance on the barn.⁵⁶ He then did an about-face and admitted that he could not remember if conversation I took place after the car purchase; he decided that he was not sure whether it was before or after.⁵⁷ He admitted making a prior statement under oath that conversation I took place in July, a few days before he bought the car.⁵⁸ He testified that the prior statement “must have been” incorrect.⁵⁹ He could not remember the date he spoke to Hassett regarding furniture insurance.⁶⁰

He first denied that he asked Hassett to come down to the ranch and look at the barn;⁶¹ but he then contradicted himself and said that he did ask Hassett to do so.⁶² He made the pregnant admission: “*Well, as far as I know, they all take a look at buildings before they insure.*”⁶³ He was asked whether, at conversation I, Hassett asked if Questa wanted the barn covered by insurance pending the time Hassett could visit the ranch; Questa’s reply was “I don’t remember that”, but he did not deny it.⁶⁴

He was “quite sure” that at conversation I he also told Hassett he wanted \$4000 insurance on the stone

⁵⁵R 61.

⁵⁶R 62.

⁵⁷R 62.

⁵⁸R 65-6.

⁵⁹R 67.

⁶⁰R 74.

⁶¹R 69-70.

⁶²R 70, 71.

⁶³R 70.

⁶⁴R 76.

house,⁶⁵ but he could not explain why he omitted to say this in his prior sworn statement.⁶⁶

He was “quite sure” that he never mentioned to Hassett the reproduction cost of the barn before the fire;⁶⁷ but his counsel stipulated that in his prior sworn statement he testified to the exact contrary.⁶⁸

He admitted that the amount of insurance to be written was never mentioned except at conversation I.⁶⁹

He insisted that Hassett’s visit to the ranch took place after Hassett’s bookkeeper had been to the ranch and received a check;⁷⁰ the bookkeeper’s visit he fixed on August 15th.⁷¹ When confronted with his prior statement that Hassett visited the ranch before August 15th,⁷² he first insisted that was wrong,⁷³ but finally admitted that he was not sure.⁷⁴

He said that conversation II with Hassett took place on Virginia Street about the middle of August; and conversation III at the Riverside Bar in late August or early September.⁷⁵ He said that Hassett had already visited the ranch before conversation II, and that he did not expect Hassett to come to the ranch

⁶⁵R 63-4.

⁶⁶R 73-4.

⁶⁷R 85.

⁶⁸R 85-6.

⁶⁹R 77.

⁷⁰R 77-8.

⁷¹R 44.

⁷²R 78.

⁷³R 78-9.

⁷⁴R 80.

⁷⁵R 34.

again.⁷⁶ Subsequently, he doubted if Hassett had been to the ranch before conversation II;⁷⁷ he then asserted that he was “quite sure” that Hassett had been to the ranch before conversation II;⁷⁸ and he finally admitted that he did not remember whether conversation II took place before or after the ranch visit.⁷⁹

He insisted that conversation III took place after Hassett’s visit.⁸⁰ And, although he asserted that the purpose of Hassett’s visit was to ascertain the amount of insurance that the company would write, he said that there was no talk whatever about the amount of insurance at conversation III.⁸¹ Although he insisted that there was no point to a second visit to the ranch by Hassett,⁸² he admitted that at conversation III Hassett said “I will take care of it; I will come down”.⁸³

We believe that plaintiffs’ counsel summed up Questa’s testimony in a masterpiece of understatement on redirect, when he said: “Mr. Questa, you were more or less confused on one or two questions there”.⁸⁴

b. Hassett fixed the date of his first conversation with Questa on barn insurance as the middle of June; and he fixed the date and place by a specific event

⁷⁶R 77.

⁷⁷R 81.

⁷⁸R 82.

⁷⁹R 83.

⁸⁰R 83.

⁸¹R 83-4.

⁸²R 77.

⁸³R 34, 84-5.

⁸⁴R 86-7.

that occurred at the same time.⁸⁵ He testified that he asked Questa if he wanted the barn held covered by insurance “until I come out to the ranch”, and that Questa replied “No, wait until you come out and see it”; that no amount of insurance was mentioned at all.⁸⁶ Two or three weeks later he saw Questa on Virginia Street, and Questa asked him when he was coming to the ranch; he said he would be out within the next day or two; nothing was said regarding values or amount of insurance or rates.⁸⁷

Hassett went to the ranch around July 10th; he saw Mrs. Questa, who said she had nothing to do with insurance and said he would have to see her husband who was not then at home.⁸⁸ Hassett fixed the date of his visit to the ranch with reference to the automobile insurance, which came to him on July 25th.⁸⁹ Two days later he met Questa at Club 116, and the latter wanted to know when he was going “to come out to the ranch and insure the barn”; they discussed the automobile insurance; but there was no talk with regard to the amount of insurance wanted on the barn.⁹⁰ This was Hassett’s last conversation with Questa prior to the fire, and he did not get out to the ranch again.⁹¹

⁸⁵R 153-5.

⁸⁶R 155.

⁸⁷R 155-6.

⁸⁸R 156-7. Mrs. Questa also testified regarding Hassett’s visit to the ranch; she agreed that Hassett did not go into the barn (R 97), and that they did not discuss insurance (R 104-5).

⁸⁹R 156-8.

⁹⁰R 158-9.

⁹¹R 160.

After the fire, Hassett blamed himself for not having brought the barn insurance matter to a head before the fire occurred, but he testified positively that no amount of insurance had ever been mentioned between him and Questa at any time prior to the fire.⁹² Questa came to Hassett's office after the fire to inquire if he was insured; Hassett replied that he was not, but that in view of Hassett's failure to get out to the ranch as requested, he would submit the entire matter to appellant for decision.⁹³ Questa blamed Hassett, and said that if Hassett had come out to the ranch he (Questa) would have insured the barn for \$4000.⁹⁴

c. Hassett's testimony, unlike Questa's, is consistent throughout; and is, indeed, strengthened by his obvious desire to give Questa the benefit of every doubt. It is, moreover, corroborated to the point of invulnerability by the testimony of three other witnesses.

(1) Witness Corica, an insurance competitor of Hassett's,⁹⁵ testified that he and Witness Parish went to the Questa ranch on September 9th in connection with the insurance of some hay located in the barn in question and belonging to one Mrs. Cupit.⁹⁶ He fixed the date beyond argument by reference to his office copy (daily report) of the insurance policy which he issued the following day;⁹⁷ this daily report the wit-

⁹²R 160-1.

⁹³R 162.

⁹⁴R 162-3.

⁹⁵R 189-90.

⁹⁶R 190-1.

⁹⁷R 191.

ness had with him in Court and it bore the date of September 10th.⁹⁸ “Mr. Parish asked Mr. Questa if he had insurance on the barn. *Mr. Questa said that he did not have it insured.* He asked us what the rate would be. We gave him an approximate rate . . . Mr. Parish asked him if he wouldn’t let him insure it. Mr. Questa said he didn’t want to insure it, that Mr. Hassett took care of all his insurance business.”⁹⁹

(2) Witness Parish, who accompanied Corica, confirmed this conversation: “As we walked out of the barn, I asked him (Questa) if he had insurance on the barn and he replied *No . . .*”¹⁰⁰ Parish, too, was able to fix the date of this conversation with indubitable accuracy. Mrs. Cupit had placed the order for the hay insurance on August 15th.¹⁰¹ On August 27th, Parish caused a cover note or binder to be issued through Corica’s office evidencing this insurance; this cover note (Exhibit “5”¹⁰²) is dated August 27th and evidences insurance coverage beginning August 15th. Parish held the cover note in his office until September 9th, on which date he asked Corica to visit the ranch with him to ascertain the amount and value of the hay and place of storage so the final policy could be issued. On the same day upon returning to his office from the ranch, Parish wrote on the cover note in longhand the notation “Ordered 9-9-41, Parish,

⁹⁸R 199-200.

⁹⁹R 192.

¹⁰⁰R 208.

¹⁰¹R 214.

¹⁰²R 205-6.

Corica.”¹⁰³ This notation enabled Parish to fix the exact date of his visit to the ranch.

Appellees took the stand in rebuttal and attempted to fix the date of the Corica-Parish visit in July instead of August. Mrs. Questa testified to July as the date when two men came to the ranch and she directed them to Questa. But both Corica¹⁰⁴ and Parish¹⁰⁵ said they did not see or talk to Mrs. Questa at all. And Parish’s testimony that he had no request for insurance on the Cupit hay prior to August 15th,¹⁰⁶ corroborated as it is by the cover note (Exhibit “5”), should clinch the matter of date.

Moreover, Parish testified that he followed up his attempt to procure the insurance on Questa’s barn when he met Questa in Reno between September 9th and the fire. Parish asked him if he had ever written the insurance on the barn, and Questa replied in the negative.¹⁰⁷ There was no refutation whatever of this testimony.

(3) Witness Porta, Hassett’s secretary, testified to a portion of a conversation that she overheard between Questa and Hassett shortly after the fire. She heard Questa raise his voice in anger and say: “. . . I told you three times to come out *and if you had come out there I would have \$4000 insurance on the barn* . . .”¹⁰⁸ This testimony cannot be reconciled with

¹⁰³R 202-3.

¹⁰⁴R 191.

¹⁰⁵R 239.

¹⁰⁶R 240.

¹⁰⁷R 210-11.

¹⁰⁸R 177.

that of Questa any more than can the testimony of Corica or Parish.

d. Hassett,¹⁰⁹ Corica,¹¹⁰ and Parish¹¹¹ testified without contradiction that it is the custom of the insurance business as conducted in Reno, where there is any long delay between the placing of a firm order for insurance in a specific amount and issuance of the completed policy, a cover note or binder is written up to evidence the existence of insurance in the interim. The very fact that that was not done here, although admittedly done by Hassett in all other cases involving Questa both before and after the barn insurance conversations,¹¹² is also strong corroboration of appellant's position.

We submit that the finding that there was an oral contract of insurance in existence at the time of the fire is clearly erroneous in the light of the evidence. And further, and entirely independently of this, the finding that there was an oral contract for insurance *in the amount of \$4000* is indisputably erroneous and is not supported by any evidence whatever.

¹⁰⁹R 155-6.

¹¹⁰R 195.

¹¹¹R 204.

¹¹²R 146-8; Exhibit "4", R 149-50; R 165-6.

IV.

THERE IS NO COMPETENT TESTIMONY IN THE RECORD SUPPORTING THE FINDING RELATING TO THE AMOUNT OF LOSS BY FIRE. APPELLANT'S MOTIONS TO STRIKE THE TESTIMONY ON VALUES SHOULD HAVE BEEN GRANTED.

The complaint alleges that the barn "was totally destroyed by fire, whereby the plaintiffs sustained loss to the amount of \$7500."¹¹³ These allegations are denied by the answer.¹¹⁴ The trial court found that the barn "was totally destroyed by fire, whereby the plaintiffs sustained loss to the amount of \$4000."¹¹⁵

Mrs. Questa's parents acquired the ranch about 40 years ago, and the barn was already there;¹¹⁶ Questa was not sure, but he did not think it was as old as 50 years.¹¹⁷ It had been built out of old mill timbers from Virginia City.¹¹⁸ The roof had never been re-shingled.¹¹⁹ Questa had painted the barn about 8 years before the fire,¹²⁰ and had spent \$400 or \$500 to put in cement pillars and about \$150 to fix some of the windows and doors.¹²¹ The floor had been torn out, and there were no floor and no stalls in the barn when it burned; also, the boards had been pulled out of the hayloft floor "to get air to the onions".¹²² Questa said the barn was "in excellent condition".¹²³

¹¹³Complaint, V; R 3.

¹¹⁴Answer, II; R 6.

¹¹⁵Findings, V; R 19.

¹¹⁶R 102-3.

¹¹⁷R 53.

¹¹⁸R 38.

¹¹⁹R 57.

¹²⁰R 57.

¹²¹R 55-6.

¹²²R 56-7.

¹²³R 38.

1. On direct examination of Questa, the following occurred:¹²⁴

“Q. Are you familiar with the value of the barn? A. Yes.

Q. And what would you value the barn at?

A. \$15,000.

Q. Do you mean it would cost that to replace it? A. Yes.

Mr. Levit: I move the witness's answer be stricken because the replacement cost, your Honor, is not the value of the barn. The witness is not qualified to testify as to replacement cost. If your Honor feels he is qualified to testify as to value, we have no objection to that, but by his testimony now he has indicated the figure he gave us was in no sense a figure of value and he has not been qualified with regard to replacement costs and therefore I move his answer be stricken as to replacement value.

The Court: I will reserve ruling on that. We will take that up later.”

On redirect, Questa was again asked his opinion of the value of the barn “taking into consideration depreciation, etc.” Again, he replied \$15,000; and appellant renewed its objection and motion to strike.¹²⁵

A few questions later, he said that the barn's value at the fire was \$8000.¹²⁶ But on cross examination, the following occurred:¹²⁷

¹²⁴R 40.

¹²⁵R 87.

¹²⁶R 88.

¹²⁷R 93-5.

“Q. Now, Mr. Questa, how much do you think, in your opinion, a barn of the type of this barn depreciates per year?

A. Well, I haven't any idea, I couldn't say.

Q. Well, your figure of \$8000, did you take depreciation into consideration in fixing that figure?

A. I believe it should have been insured for 50 per cent.

Q. 50 per cent of what?

A. Fifteen thousand.

Q. That was your testimony as to what the replacement cost was, is that right? A. Yes.

Q. In other words, you figured there was a depreciation of 50 per cent?

A. No, I didn't mean it that way.

Q. Will you explain what you did mean then in fixing that \$8000 figure?¹²⁸

A. Well, I figured \$8000 would have been the right amount of insurance, \$7500 to \$8000, for the barn.

Q. Well now what did you consider the value of the barn to be at the time of the fire?

A. \$15,000.

Q. In other words, the figure of \$8000 that you gave was merely the amount of insurance that you think it would have been proper to carry?

A. Yes, \$7500 to \$8000.

Q. But your testimony as to the value of the barn at the time of the fire was \$15,000?

A. I must have misunderstood the question.

Q. Well, how is it now?

A. Well, the barn was valued at \$15,000.

Q. By you, is that right? A. Yes.

¹²⁸The word “figure” reads “premium” in the transcript, but this is obviously a mistake.

Q. That was your idea of its value as it stood on the day of the fire? A. That is right.

Q. And what was the figure of \$8000 that you mentioned? A. For insurance, \$7500 to \$8000.

Q. In other words, that was all the insurance on it that you wanted to carry?

A. That is right.

Q. In other words, you were figuring on insuring it for about 50 per cent of what you considered its value to be? A. That is right.

Mr. Levit: I think that is all, your Honor, except I would like to renew my motion in regard to the testimony.

The Court: We will take those motions up at the time of the argument . . .”

Appellant renewed the motion to strike Questa's testimony as to value in its briefs and on the oral argument, but presumably it was denied as the record is silent on the point.

Questa's figure of \$15,000 was stated by him to be his estimate of replacement cost. But Questa was not properly qualified to testify to replacement cost, and obviously replacement cost is not value because it omits the element of depreciation. Questa's figure of \$8000 was stated by him to be, not value, but rather his idea of the amount of insurance he wanted to carry; it was, he said, merely an approximate halving of his value figure of \$15,000—which was not value at all, but replacement cost, according to his own testimony.

It is submitted that the testimony of Questa furnishes no support whatever to the trial court's finding

of the value of the barn;¹²⁹ and that the court erred in not striking the testimony as moved by appellant.

2. The only other testimony in the record on value was that of appellees' witness Williams, who was called as an expert. Williams had been a building contractor for 32 years; he had built houses, churches, a telephone building, a furniture store, and a hotel.¹³⁰ But the last barn he remembered working on was in California in 1902, and he had not repaired any barns in the last 40 years.¹³¹

Williams was called to establish replacement cost of the barn. Yet it is clear that, even granting his qualifications as an expert, he did not have sufficient acquaintance with the barn or information concerning it to lay a proper foundation for his testimony. *Five years* before the trial he had done some work on *another* building on the ranch, about 300 feet from the barn. He went in the barn *once or twice* "to get something", but he did *not* go through it or inspect it.¹³² He was asked on direct whether he recollected anything such as "extraordinary irons or braces or angles or lag screws" in the barn, and his answer was that he "didn't pay so much attention to that".¹³³ Before he drew his plans he "went down on the river bank" and "hunted up the old braces", because he "didn't know exactly what they were"; he found

¹²⁹*If* there is such a finding, which appellant disputes. See, *supra*, Argument, Point II, 2.

¹³⁰R 106.

¹³¹R 123-4.

¹³²R 107.

¹³³R 110.

“a part” of them.¹³⁴ He was able to measure the ground dimensions, but he asked Questa “how high it was”.¹³⁵ The only information he got from Questa was as to the height; he just “figured out as near as I could remember” how the barn was built from his casual visit five years before. The floor was “one thing I wasn’t sure about”, but he included it in his replacement estimate.¹³⁶ He had never gone into the hayloft, and “didn’t pay any particular attention, no more than I sized it up”; but his estimate called for a hayloft floor of the best type of construction that would be used in a structure of this kind.¹³⁷ He did not do “so very much” guessing in preparing his estimate, but “some things . . . I had to guess at”.¹³⁸ He was “almost certain”, but only from a five-year old memory, of the type of wall construction.¹³⁹ He “figured” there had been a brace over each post in making his estimate, although it would not have been possible for him to have seen this and he admitted that in fact he had not seen a brace over each column; but he found “some” of the old lumber and rods along the river bank.¹⁴⁰

He was totally unaware that the barn that burned had had no floor, floor joists, or stalls in it, and when this was called to his attention he was forced to de-

¹³⁴R 110.

¹³⁵R 112.

¹³⁶R 118-9.

¹³⁷R 123.

¹³⁸R 125.

¹³⁹R 174.

¹⁴⁰R 174-5.

duct \$3625.99 from his replacement estimate of \$14,235.30,¹⁴¹ thus admitting an error in his figures of more than 25 per cent. He admitted also that the concrete piers were still in place after the fire and had not been damaged, yet his figures included a completely new set of piers;¹⁴² he explained that he preferred a different type of pier construction, although that would result in a better building than the one that burned.¹⁴³

Appellant moved to strike the testimony of Williams and Exhibits "B" and "E" prepared by him on the ground that no proper foundation was laid for his testimony, that he himself had no foundation for arriving at his estimate, and that his estimate was based on facts not in accordance with the admitted physical facts involved. The court refused to rule at the time¹⁴⁴ and did not expressly do so later, although appellant renewed the motion in briefs and argument; the motion must be deemed to have been denied.

Atlantic Life Ins. Co. v. Vaughan (CCA 6) 71

F2 394, 395-6:

"While the courts will give wide latitude to the reception of expert opinion evidence, we think it axiomatic that it must be based upon conceded or proved facts, and that a naked opinion, based obviously on mere speculation and conjecture does not rise to the dignity of evidence, especially when it is in conflict with the conceded physical facts . . ."

¹⁴¹R 173.

¹⁴²R 116-7.

¹⁴³R 117.

¹⁴⁴R 131-2.

20 *AmJur* (Evidence, Secs. 787, 793) 661, 666:

“An opinion of an expert must be based upon facts, proved or assumed, sufficient to form a basis for an opinion, and cannot be invoked to supply the substantial facts necessary to support that conclusion.”

“If the witness called upon to give expert testimony is acquainted with the facts of the case . . . he may give his opinion upon the basis of his knowledge and observation in response to direct interrogation, *provided he is shown to have sufficient knowledge of the facts to enable him to form an opinion entitled to be given weight by the jury . . .*”

32 *CJS* (Evidence, Secs. 545, 546) 284-5, 326-7;
Hammaker v. Schleigh (Md.) 147 A 790, 65
ALR 1285, 1296-7;

Irion v. Hyde (Mont.) 105 P2 666, 669-70;

Detroit Fire & M. Ins. Co. v. Gagliardi (Colo.)
32 P2 832, 835;

Security Ins. Co. v. McAlister (Okla.) 217 P.
430.

Appellant's motion to strike the testimony of Williams should have been granted; and, in any event, it cannot be said to furnish evidentiary support for any finding on the amount of loss by fire. The purported finding on this point is clearly erroneous and without any competent evidence to support it.

For the reasons and upon the grounds above stated
the judgment appealed from should be reversed.

Dated, San Francisco, California,
April 14, 1943.

Respectfully submitted,
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BERT W. LEVIT,
WILLIAM H. LEVIT,
Attorneys for Appellant.

LONG & LEVIT,
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Of Counsel.

No. 10,360

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit 3

MILWAUKEE MECHANICS' INSURANCE
COMPANY (a corporation),
Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA
(husband and wife),
Appellees.

BRIEF FOR APPELLEES.

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Attorney for Appellees.

FILED

MAY 14 1943

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No. 10,360

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MILWAUKEE MECHANICS' INSURANCE
COMPANY (a corporation),

Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA
(husband and wife),

Appellees.

BRIEF FOR APPELLEES.

STATEMENT OF CASE.

A. The pleadings—Correctly stated by appellant.

B. The evidence—It is not fully stated by appellant.

The facts fully stated are:

On August first nineteen hundred and forty one Silvo Questa applied to Frank Hassett, agent for the Milwaukee Mechanics' Insurance Co., for \$7500.00 insurance on a barn situated on the Glendale Ranch, Washoe County, Nevada, for a period of three years in the usual form with the usual policy which he made on other properties of Questa and his wife: (1) Hassett assured Questa that he would insure the barn and that he would come down to the ranch to see the barn;

(2) Mr. Hassett went to the ranch. The barn is about one hundred yards from the house and it is a big barn; you couldn't help but see it. That barn was the biggest building at the ranch; (3) Questa spoke to Hassett at least twice thereafter concerning the insurance and Hassett said: "I will take care of it and I will come down:" (4) On September 20th, the barn burned down (5) and Questa called on Hassett four days after because he expected Hassett to show up at the ranch (6) Questa asked Hassett if he had his policy of insurance after he told him that the barn had burned down. Hassett replied to Questa not to worry that it was his worry from then on and at the same time put his hand to his head and said: "It is all my fault. Let me do the worrying. I have been so busy running back and forth to Las Vegas, Nevada." Thereafter he continued to do business with Hassett. (7) After New Years 1942 Hassett informed Questa that he had talked to his boss and his boss said that there was no insurance. (8) Hassett told Questa to be patient for three days and the last part of January, Hassett told Questa that he had told his company to charge it up to advertisement and pay it (9) and Hassett stated in twenty five years he had been with the company he had learned something, that hereafter when he got an order he would write it down. He also said it was an order and if he had to get up on the witness stand he would admit it was an order. (10) Questa stated that he had been in the ranching business all of his life (11) and was familiar with barns and that he valued the barn at fifteen thousand dollars and he stated it would cost fifteen thousand dollars to

replace the barn. (12) That the fabric of the structure pertaining to uprights and timbers and girders and other things that made for the construction were timbers 12 x 12 and 10 x 10 ironed and braced under each and every pillar. (13) The picture of the barn was admitted in evidence as plaintiff's Ex. A which was taken during the summer of 1940. A policy similar to the other policies received by Questa was admitted in evidence as plaintiff's Ex. C (14) after Questa had testified that it was similar. A check was admitted in evidence marked plaintiff's Ex. D in the sum of \$75.00 made payable to Frank Hassett agent for defendant in the sum of \$75.00 and dated August 15, 1941. (15) Mr. S. L. Williams testified that he had been a building contractor for 32 years and built homes and large buildings naming them. (16) That he worked at the Glendale Ranch of Questa's and five five years before he rebuilt a stone house on the ranch. (17) Mr. Williams testified that a building of the kind of timbers in the barn with new piers put under them the piers being one and one half feet thick and five feet square would be thought to restore to be as good as any barn. (18) Mr. Williams testified that it would cost \$14,325.30 to reconstruct the barn. (19) He further testified that he would deduct \$3625.99 from that figure for the floors and stalls which had been removed before the fire in order to place concrete piers under posts. (20) Mr. Hassett testified that he went to the ranch and told Mrs. Questa at the ranch that he had come there to talk to Silvo about the insurance on the barn, on July 25 or 26 1940 and he said Mrs. Questa said: "Silvo takes care of that so you will have to

see him.” However Mr. Hassett went to the ranch about insurance on the barn and the barn was the largest building on the ranch. Mr. Hassett testified he had insured against fire on the ranch and collected premiums for same company. (21) Mr. Hassett was asked by his attorney if at any time prior to the fire was any amount mentioned between you and Mr. Questa as to the amount of insurance that was to be carried on the barn and Mr. Hassett said no and when asked about rate also Hassett answered (22) “No, he never inquired the rate, in fact he never asked me the rate for anything, just placed the insurance and we wrote the policy.” Mr. Hassett was asked by his attorney: “Did you at any time, prior to the fire, write out any covering note or memorandum of insurance with regard to this barn?” and Hassett answered: “No, I did not,” but since that time and after getting better acquainted with the way the people talk, I think I should have made a mental memorandum.

Mr. Levit: “For how much insurance?” (22)

“Well, I think, in other words I think if I got out there deliberately to write the insurance, I would have written another two thousand dollars.” (24)

The Court said at that juncture: “Just a moment. I didn’t exactly understand one expression of the witness. I would like to have you explain what you meant by mental memorandum.”

A. “Well, after growing better acquainted with Silvo as time went on, I think what Silvo meant for me to do the first time I met him was to go out and

see the barn and whatever I thought was right for it I could write on it without further conversation with him, and I didn't, unfortunately understand his language at that time." (25)

In appellant's statement on page 3 of Brief for Appellant, the testimony of Parish and Corica was that 11 days before the fire that Questa told them the barn was not insured. That testimony is entirely refuted by Questa and Ex. H of plaintiff, definitely fixes the visit of Parish and Corica during July, 1941, and not September, 1941. (26)

1- R 32	9- R 36	17- R 107
2- R 32	10- R 36	18- R 108
3- R 33	11- R 39	19- R 112-113
4- R 34	12- R 40	20- R 173
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6- R 35	14- R 43	22- R 160
7- R 35	15- R 45	23- R 160
8- R 36	16- R 106	23- R 161
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After the trial of the case the Court rendered judgment in favor of plaintiff for \$4000.00.

SPECIFICATION OF ERRORS.

Appellant sets forth seven specifications of errors on pages 5 and 6 of his brief and he refers to them in argument I, II, III and IV of which appellee will answer hereinafter.

SUMMARY OF ARGUMENT.

Appellant sets forth on page 7 of his brief: "Appellant's argument will be presented under the following points and he sets forth four.

Appellee will answer the summary of argument hereinafter.

ARGUMENT BY APPELLEE AGAINST APPELLANT'S ARGUMENT No. I.

Appellant states: "There is a fatal variance between the contract found as the basis of recovery and the contract found as the basis of the judgment"; and he cites on page 8 of his brief 7 *C. J. S.* (contracts) Sec. 570, 1205. Appellant did not follow through with his authority, if he had he would have found in same section at page 1206: "A variance to be fatal must be substantial and material,"

Gardner v. Burket, 40 P. (2d) 279;

Johnson v. De Waard, 298 Pac. 92,

and, it has been held, must mislead the opposite party. The decisions are to the effect that the variance must mislead to render contract void.

Irby v. Phillips, 82 Pac. 931.

The adverse party not being misled to his prejudice in such a case. In 17 *C. J. S.*, Sec. 571, page 1208, sets forth:

"But there is authority that proof of an amount due which is less than that claimed is not a variance."

In *Brazil v. Pacific Amer. Pet. Co.*, 292 Pac. 275, the contract introduced in evidence was not the one alleged and it was all together different in substance.

Nevada's Statutes With Relation to Variance Are:

Sec. 9636, N. C. L., 1929, Vol. 4. Variance. Not Prejudicial Deemed Immaterial. Amendment.

No variance between the allegations in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.

Harwood v. Carter et al., 47 Nevada 335;

Martin v. Roberts, 51 Nevada 150;

Burgess v. Helm, 24 Nevada 242.

Sec. 8637, N. C. L., 1929, Vol. 4. Idem. Order, If Variance Immaterial. Amendment.

Where the variance is not material, as provided in the next preceding section, the Court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

Sec. 8638, N. C. L., 1929, Vol 4. Idem. Failure of Proof Distinguished From Variance.

Where, however, the allegation of the claim or defense to which the proof is directed is unproved, not in particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

ADDITIONAL AUTHORITIES:

17 C. J., 1209, Sec. 573;

Dougherty v. Calif. Kettleman Oil Royalties,
69 P. (2d) 155.

Appellant cites 3 *C. J.* (Appeal and Error, Sec. 720) 796-7 as in appellees' favor. Appellant introduced the testimony of witness Porta (R. 177) and endeavored to show that the contract of insurance was less than \$7500.00 or did not exist at all. Appellant is objecting for the first time in Appellate Court to the testimony which he elicited which cannot be done.

3 *C. J.*, 800, note 92.

Appellant's objection in the U. S. District Court should have been on the grounds of variance and should have been specific, not general, and must show in what variance consists, so that, if necessary an amendment may be made to avoid it, and another objection than that specified shall be considered on appeal.

3 *C. J.*, page 801.

APPELLEE'S ARGUMENT II AGAINST APPELLANT'S ARGUMENT II.

Appellant states: "The judgment is not supported by the findings of fact and conclusions of law made by the Court."

Appellee cites:

*Rules of Civil Procedure For the District Courts of the
United States*

Rule 52. Findings of the Court.

"Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Trial Court to judge the credibility of the witness."

Rule 61. Harmless Error.

No error in either the admission or exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceedings must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

In view of the rules of the United States Courts the appellant should have read further in 64 *C. J.* 1247-8, which followed appellant's citation: "but except in some jurisdictions, the precision and particularity necessary in a special pleading are not necessary in a finding."

Appellant's objections set out in argument II are frivolous.

Appellant sets forth on page 13 of brief that: "In absence of a finding of fact of value of the property destroyed at the time of its destruction it is submitted that the judgment cannot stand."

Bancroft Code Pleadings, Sec. 1580, page 2614, reads:

"And an allegation that the plaintiff was damaged by the fire in a certain sum is not an allegation of value. But a failure to allege value

of the property at the time of the loss is cured by the admission of evidence as to its value without objection and by a verdict for plaintiff."

Questa testified: Page 72-73, Transcript—"I told him I wanted to insure the barn knowing he has insurance on the new house, and I told him I wanted to insure that barn and he asked me what I thought of the barn. I said, "The barn is a huge thing; it cost \$15,000.00 or more to build it today."

Q. You told him that?

A. That is right, so we figured on \$7500.00.

Q. When you say we figured, tell me the conversation?

A. We agreed on \$7500.00.

Q. As to the amount of the policy?

A. That is right, and he was going to come down and see.

Q. See the barn?

A. That is right.

There was no objection to the foregoing.

Further testimony, page 39, Transcript:

Q. Now, Mr. Questa were you familiar with the construction of the barn?

A. Yes.

Q. Kindly describe it?

(He explained all about it on page 40.)

Q. Are you familiar with the value of the barn?

A. Yes.

Q. And what do you value the barn at?

A. Fifteen thousand dollars.

To that point there was no objection to the value.

To the following there was an objection:

Q. Do you mean that it would cost that to replace it?

A. Yes.

Mr. Levit: I move the witness's answer be stricken because the replacement cost, your Honor, is not the value of the barn. The witness is not qualified to testify as to replacement cost. If your Honor feels he is qualified to testify as to value we have no objection to that, but by his testimony now he has indicated the figure of value and he has not been qualified with regard to replacement costs and therefore I move his answer be stricken as to replacement value.

A rancher has peculiar training in matters of land values and barns are affixed to the land and are real estate. A barn is the most valued adjunct to a ranch.

Wigmore on Evidence, Second Edition, pages 1128-1139, on Value; Sec. 5, page 1131, On Rancher or Farmer, Vol. 1.

“A sufficient qualification is usually declared to exist where the witness is a resident, land-owner, or farmer in the neighborhood.”

The notion is that of a person who has an interest and an opportunity to make himself acquainted with land values around him.

See also Sec. 720, Vol. 1, page 1138.

Questa had already testified that he was familiar with the construction and there was no objection and further Mr. Levit for appellant withdrew his objec-

tion if the Court felt that he was qualified to testify and the Court allowed him to testify.

In *Hegard v. California Insurance Co.*, 11 Pacific Reporter, 594:

“Under an insurance policy that the cash value of the property destroyed or damaged by fire shall in no case exceed what would be the cost to the assured at the time of the fire of replacing the same, and in case of depreciation of the property from use or otherwise, a suitable deduction from the cash costs of replacing same shall be made to ascertain the actual cash value.”

Replacement value was testified to by S. L. Williams, pages 105, 116, 129, 133, 172-174 of Transcript.

S. L. Williams is a carpenter and contractor and is qualified to testify as to value of replacement.

Bedell v. R. Co., 44 N. Y. 370;

Wigmore on Evidence, Vol. 1 (2d ed.) pp. 1128-1139.

The usual form of insurance policy was admitted in evidence, Plaintiff's C.

Further Authorities:

Hegard v. California Ins. Co., 14 Pacific 180;

Waldron v. Home Mut. Ins. Co., 38 Pacific 136;

Emigh v. State Ins. Co., 27 Pacific 1063.

Pleading Value.

Bancroft Code Pleadings, page 2616, chapter 1580.

“And it is unnecessary to allege the actual cash value of the property although the policy

provides that the measure of recovery shall in no case be greater than its cash value at the time of the fire, since such a provision only establishes a rule as to the proof necessary to be made in order to show the loss or damage sustained, and it is not necessary to plead matters of evidence. (10)

Hegard v. California Ins. Co., 2 Cal. 663, 11 Pacific 594 (subsequent opinion in bank), 72 Cal. 535, 14 Pacific 180-359, as to the necessity for pleading matters of evidence.

Hegard v. California Ins. Co. (it is right in point).
Pacific Reporter, page 594:

Recovery on Policy—Actual Cash Value—Findings. Where an insurance policy provides that in no case shall the recovery be greater than the actual damage or cash value of the property, a finding that the loss sustained on account of the destruction of a building by fire was a certain sum, the amount insured for is sufficient and the Court need not state the evidential fact *that the cash value of the property* when destroyed was a certain sum.

In *Hegard v. California Ins Co.*, 14 Pacific 180, Fire Insurance Policy, Depreciation Clause Evidence.

“The material question under the depreciation clause in a policy of fire insurance is, what is the actual condition and value of the property insured at the time of the fire? And, where there is no evidence for the company on that point, it is harmless error to refuse to admit

testimony as to the probable depreciation prior to the insurance of the property." In that case the provisions of the insurance policy, Plaintiff's Ex. C. relative to the mode of computing damages are the same: "The cash value of property destroyed or damaged by fire shall in no case exceed what would be the cost of the assured at that time of the fire, of replacing the same: In case of the depreciation of such property from use or otherwise as suitable deduction from the cash cost of replacing the same shall be made to ascertain the actual cash value." See page 181 of decision.

APPELLANT STATES IN ARGUMENT III:

"The findings of fact relating to the existence and terms of the oral contract of insurance are clearly erroneous." No. 1. Findings.

In answer to III appellee repeats all of the decisions heretofore set forth.

Further Authorities:

Vol. 18, *Hughes Federal Proceedings*, Secs. 24531-2-3-4-5-6, 24551. Finality and scope of review:

"Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Also sections 24571, 24572 *Hughes Federal Proceedings. R. C. L.*, Vol. 26, page 1087.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Findings must be considered as a whole and cannot be separated into parts and assailed where they cannot be successfully assailed as a whole. They are not to be construed with the strictness of special findings, but it is sufficient, if from them all taken together with the pleadings, there is enough upon a fair construction to justify the judgment, notwithstanding their want of precision.

AN OPINION OF THE COURT GIVING THE REASON FOR ITS DECISION DOES NOT OPERATE AS FINDINGS OF THE COURT.

Victor Gold Stc. Co. v. National Bank of Republic, 18 Utah 87, 55 Pacific 72.

Appellant set forth on page 14 of its brief:

2—*Nature of Proof Required to Establish an Oral Contract of Insurance.*

In answer to section 2 of Argument III concerning nature of proof an entirely different situation arises in this case where the insured has done business with the insurer in other matters of insurance. To make a binding contract for insurance there need only be the offer to insure and the acceptance.

Vol. 29, *American Jurisprudence*, page 152:

Offer to Insure and Acceptance.

“While the usual course of dealing is otherwise for an insurance contract may be initiated by the insurer offering to insure on certain terms and where this is the case the contract is

complete the acceptance of the offer by the person proposed to be insured."

Vol. 92, *A. L. R.* at 233

"The recent cases support the modern rule that if the minds of the parties have met in regard to the essential element of the agreement it does not matter whether the form of the contract is written or oral, in other words, the oral contracts of insurance are valid in the absence of charter or statutory prohibition."

Vol. 92, *A. L. R.* at 235

"In some instances it is not essential to an oral contract of insurance that every detail should be expressly agreed upon, since an implied agreement concerning essentials is as good as express agreement."

Globe and R. F. Insurance Co. v. Draper, 92 A.L.R. 235, 66 F. (2d) 985 sets forth:

"So it has been said that an agreement relative to the amount of insurance, amount of premium to be paid and the duration of the risk, need not be expressed in order to render the contract effective, but may be implied from previous dealings between the parties if such have occurred and surrounding circumstances."

Globe and R. F. Insurance Co. v. Eureka Sawmill Co. (1934), 227 Ala. 667, 151 So. 827.

Page 160, Transcript. By Mr. Levit, attorney for appellant:

"Mr. Hassett, was any amount mentioned as regards the amount of premium or rate?"

A. "No, he never inquired the rate, in fact he never asked me the rate for anything, just placed the insurance and we wrote the policy."

APPELLEE'S ANSWER TO

3. SUMMARY OF THE EVIDENCE, PAGE 15 OF APPELLANT'S BRIEF.

Appellant argues, page 15, to establish the making of the contracts appellees rely entirely upon the testimony of Questa. That is not so. The appellant's agent admits that he agreed to insure the property.

Page 157, Transcript:

Q. Was anything said on that occasion between you and Mrs. Questa as to insurance?

A. Well, she said—it seems to me I told her I come out to talk to Silvo about insurance on the barn.

Page 160, Transcript:

Q. Was any amount mentioned in regards the amount of premium or rate?

A. No, he never inquired the rate; in fact, he never asked me the rate for anything, just placed the insurance and we wrote the policy.

Page 160, Transcript:

Q. Did you at any time, prior to the fire, write out any covering note or memorandum of insurance with regard to this barn?

A. No, I did not, but since that time and after getting better acquainted with the way people talk, I think maybe I should have made a mental memorandum.

Q. For how much insurance?

A. Well, I think, in other words, I think if I got out there deliberately to write insurance, I could have written another two thousand dollars.

The Court: Just a moment. I didn't exactly understand one expression of the witness. I would like you to explain what you mean by a "mental memorandum."

A. Well, after growing better acquainted with Silvo as time went on, I think what Silvo meant for me to do the first time I met him was to go out and see the barn and whatever I thought was right for it I should write on it without any further conversation with him and I didn't unfortunately understand his language at that time.

You will note that Hassett's testimony of page 160 of transcript states: "He never asked me the rate for anything, just placed the insurance and we wrote the policy." That related to past transactions of insurance.

ANSWERING PAGE 21 OF APPELLANT'S BRIEF.

The testimony thereon was given by Corica and Parish. Parish did not go to the ranch in September as they testified but in July to insure hay purchased under contract by Mrs. Monaei L. Cupit (page 226-238 transcript), who Parish stated was always prompt in her insurance matters.

Page 213, Transcript:

Q. Is it not customary for her to attend to matters of insurance at once?

A. It is a custom. See plaintiff Ex. H.

According to the testimony Mrs. Cupit started to haul her hay at once and there was virtually none left at the time. Parish and Corica visited the ranch in September just prior to the fire. Answering page 23 of brief Appellee denied the testimony of witness Porta.

Appellant submits that the finding was erroneous.

The numerous authorities and Nevada statutes define what is a fatal variance and what is not. The judgment of the Court predicated upon his finding was his honest determination and therefore correct.

APPELLEE'S ANSWER TO PAGES 25 TO CONCLUSION OF APPELLANT'S BRIEF, BEING ARGUMENT IV OF APPELLANT.

Silvo Questa and wife are ranchers. The evidence shows that they have lived on the ranch since 1919 and Questa lived in Nevada practically all of his life. (Page 31, transcript.) As a rancher it is known and understood that he is familiar with ranches and all things thereon, including barns.

Questa was in ranch business all of his life. (Page 39, transcript.) Barn is defined on page 405, Words and Phrases, Vol. 1, Second series.)

“A barn is defined as a covered building designed for the storage of grain, hay, flax or other farm produce.”

In other words it is a necessary adjunct to a ranch. Why would he not be qualified to answer concerning

a barn as well as he would concerning the hay, vegetables, livestock and land values.

Jones on Evidence, 3 Edition, Experts on Agriculture.

He further stated that the picture was an exact reproduction of the other picture but an enlargement. (Page 37, transcript.) Mr. Questa testified that he was familiar with the value of barns. (Page 40, transcript.)

S. L. Williams testified that he did not inspect the barn, but he was in there and he went once or twice to get something and couldn't help but notice the construction because it was out of the ordinary. (Page 107, transcript.)

Questa testified:

Q. Now this drawing that I show you is that a reproduction of the barn?

A. Yes. (Page 41 of transcript.)

Upon the testimony of Questa that plans were reproductions which had been admitted in evidence as plaintiff's Ex. E., page 113 of transcript, and no objection was interposed. S. L. Williams offered evidence of the cost to construct the barn according to the plans and his knowledge of the barn after he had viewed it. S. L. Williams is a builder of long standing and is thoroughly familiar with costs of construction. There was no timely motion to strike Ex. B. and E. of plaintiff. It took Mr. Levit until the next day before he interposed an objection and that was on the ground S. L. Williams had no

proper foundation for attempting to arrive at his estimate. (Page 131, transcript.)

Inasmuch as Questa can testify concerning barns as a matter peculiarly within his knowledge as an expert,

Jones on Evidence, 3rd. Edition, Sec. 382, Experts on Agriculture, pages 575-6,

and having stated its value and that the picture and drawings were correct, S. L. Williams, with his years of experience as a builder, could testify to replacement value.

Jones on Evidence, Sec. 368, 3rd. Ed. page 554-555,

sets forth proof of qualifications of Experts:

“In order to be competent as an expert must show himself to be skilled in the business or profession to which the subject relates, there is no precise rule as to the mode in which such skill or experience must be acquired. Thus the witness may have become qualified by actual experience, long observation without having made a study of the subject.”

Bedell v. R. Co., 44 N.Y. 370;

Wigmore on Evidence, Vol. 1, 2nd Ed. 1128-1139.

Withdrawing and Striking Out Evidence.

Jones on Evidence, 3rd Ed., 895.

“It sometimes happens that answers are made which are not responsive to questions, unobjectionable in themselves, or that improper testimony is volunteered to which there is no opportunity to object in advance. In such cases the

proper remedy is to move promptly to strike out the objectionable testimony. It is a matter of right, on proper motion, to have testimony stricken out which is irresponsive and prejudicial; and the error of the Court in this respect is subject to review by the Appellate Court. If no such motion is made, the reception of such testimony is not error, and if the motion to strike out is not promptly made, the right is waived. The rule is the same as to improper testimony given in response to a question by the party injured thereby. But a party has no right to move to strike out testimony merely because it is unfavorable to him, and it is not sufficient in such cases to merely object to the evidence after it is received.

Additional Authorities:

Judgment Distinguished from Findings. *Freeman on Judgments*, Vol. 1, Sections 1-545.

Section 3. Judgment Distinguished from Findings and Opinion. . . .

“In the case of a Trial Court, a judgment must be distinguished from an opinion. The latter is the informal expression of the views of the Court and cannot prevail against its final order or decision. While the two may be combined in one instrument the opinion forms no parts of the judgment. So, as elsewhere shown, there is a distinction between the findings and conclusions of a Court, and its judgment. While they may constitute its decision and amount to the rendition of a judgment they are not the judgment itself. They amount to nothing more than an order for judgment, which must, of course, be distinguished from the judgment.”

FAILURE TO ALLEGE VALUE

“Is cured by the admission of evidence as to its value without objection and by a verdict for plaintiff.”

Waldron v. Home Mut. Ins. Co., 2 Wash. 534,
38 Pac. 136.

“And it is unnecessary to allege actual cash value of the property although the policy provides that the measure of recovery shall in no case be greater than its cash value at the time of the fire since such a provision only establishes a rule as to the proof necessary.”

Hegard v. Calif. Ins. Co., 2 Cal. unrep. 663,
11 Pac. 594, 72 Cal. 535, 14 Pac. 180, 359.

MEETING OF MINDS.

Humphry v. Hartford Fire Ins. Co. v. Adler,
15 Blatchf (U.S.C.C.) 35 Fed. Cas. No. 6874,
12 Federal Cases Pg. 892, Case No. 6875;
Ellis v. Albany City Fire Ins. Co., 50 N. Y.
402, 407.

ORAL CONTRACTS—INSURANCE.

Joyce on Insurance, page 158, Sec. 32;
Taylor v. Merchants Fire Ins. Co., 9 How. (50
U. S.) 390.

AGREEMENTS TO INSURE MAY BE CONSIDERED IN EQUITY
AS INSURANCE.

Humphry v. Hartford Ins. Co., Federal Case
No. 6874;

*Commercial Mutual Marine Ins. Co. v. Union
Mutual Ins. Co.*, 19 Howard (60 U.S.) 318,
15 Law. Ed. 636.

INSURANCE COMPANIES' AGENT'S AUTHORITY VERBAL
CONTRACT OF INSURANCE.

Harron v. City of London Fire Ins. Co., 25
Pac. 982;

Sec. 8784, Supplement 1931-1941, *Nevada
Compiled Laws*.

For the reasons and upon the grounds stated the
Judgment appealed from should be affirmed.

Dated, Reno, Nevada,
May 14, 1943.

WILLIAM S. BOYLE,
Attorney for Appellees.

No. 10,360

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

MILWAUKEE MECHANICS' INSURANCE COMPANY (a corporation), vs. SILVO QUESTA and JENNIE QUESTA (husband and wife),	}	<i>Appellant,</i> <i>Appellees.</i>
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APPELLANT'S REPLY BRIEF.

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No. 10,360

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

MILWAUKEE MECHANICS' INSURANCE
COMPANY (a corporation),

Appellant,

vs.

SILVO QUESTA and JENNIE QUESTA
(husband and wife),

Appellees.

APPELLANT'S REPLY BRIEF.

STATEMENT OF EVIDENCE.

Appellees complain¹ that the evidence "is not fully stated by appellant"; and then profess to detail what "the facts fully stated are". But appellees' profession and performance do not coincide, as can be readily demonstrated.

(a) Appellees begin with two pages² of a highly selective and wholly incomplete summary of Questa's testimony on direct examination. Unfavorable facts and discrepancies, with which Questa's testimony

¹P. 1.

²Pp. 1, 2, and the first half of p. 3; comprising appellees' notes numbered 1 to 15, inclusive.

abounds, are simply ignored; and no reference is made to any part of the cross-examination.

(b) Next follows a short summary³ of the testimony of appellees' expert, Mr. Williams. Indeed, it is so short, so incomplete, and so inaccurate, that it can hardly be called a summary. The sentence preceding appellees' notation "(18)" is unintelligible; and, so far as we can understand it, appears to be inaccurate with relation to the concrete piers.⁴ The sentence preceding appellees' notation "(20)" seems designed to convey the impression that the fire occurred during the progress of repair work on the barn. This is incorrect for, although the record is silent on the date, the floor and stalls had been removed from the barn two or three years before the fire and had never been replaced. Again, all of Williams' testimony on cross-examination is ignored.

(c) Following this are a very few carefully chosen excerpts⁵ from the testimony of appellant's agent and witness, Mr. Hassett. Hassett was one of the primary actors in the transactions here involved and he testified at length concerning them; appellees have not attempted to "fully" state his evidence, nor have they fairly stated it.

(d) Finally, appellees note⁶ that witnesses Parish and Corica testified "that 11 days before the fire that Questa told them the barn was not insured". Ap-

³P. 3; notes numbered 16 to 20, inclusive.

⁴See our opening brief, p. 31, and footnotes 142-3.

⁵Pp. 3 (last five lines), 4, and 5 (first four lines); notes numbered 21 to 25, inclusive.

⁶P. 5; note numbered 26.

pellees bluntly assert that this testimony “is entirely refuted by Questa and Ex. H”. The assertion is unwarranted.⁷

I.⁸

Appellees do not deny the discrepancy between the contract pleaded and that found by the trial court. They argue that a variance must be substantial and material and must mislead.

With these principles we have no quarrel, but we submit that the difference between a contract of insurance in the amount of \$4000 and one in the amount of \$7500 is obviously both substantial and material. It is equally obvious that appellant was misled to its prejudice since the contract found was neither pleaded nor proved, and appellant had neither opportunity nor occasion to present to the trial court its position with regard to the possibility of existence of a \$4000 contract.

In *Johnson v. DeWaard*, 113 CA 417, 298 P 92, 94,⁹ it is said:

⁷See our opening brief, pp. 21-3, summarizing the testimony of Parish and Corica, and the attempted rebuttal thereof.

Exhibit “H” (R 233-4) has no bearing whatever on the date on which the conversation occurred between these witnesses and Questa. It is merely the agreement of sale of the hay; it recites that some of the hay is already in the barn, and some is to be put there in August. In fact, Exhibit “H” tends to corroborate what is indisputably established by Exhibit “5” (R 205-6), that Mrs. Cupit first applied for insurance on August 15th, about the time the additional hay was added.

⁸Our opening brief (pp. 8 ff.), Argument, I—Variance between contract pleaded and contract found.

⁹Cited by appellees, p. 6.

There is nothing frivolous about the requirement of findings imposed by Rule 52, *FRCP*.¹⁶

With reference to the terms of the alleged oral contract, it is significant that appellees offer no suggestions to aid this Court in interpreting the findings. One may assume that this was because appellees knew not at which horn of the dilemma to grasp. If they argued that the trial court intended to find an oral contract for insurance in the amount of \$4000, this would be tantamount to an admission that the finding of the existence of any oral contract of insurance was clearly erroneous;¹⁷ for the reason that such finding must rest on the testimony of appellee Questa alone, and he testified to an oral contract in the amount of \$7500. If, on the other hand, appellees contended that the trial court intended to find an oral contract in accordance with Questa's testimony of \$7500 insurance, it would become immediately and indisputably

¹⁶*Saginaw Broadcasting Co. v. Fed. Communications Commn.* (App. DC) 96 F2 554, 559; *ed.*, 305 US 613, 83 LEd 391:

"The requirement that courts . . . shall make findings of fact, is a means provided by Congress for guaranteeing that cases shall be decided according to the evidence and the law, rather than arbitrarily or from extralegal considerations; and findings of fact serve the additional purpose, where provisions for review are made, of apprising the parties and the reviewing tribunal of the factual basis of the action of the court . . . , so that the parties and the reviewing tribunal may determine whether the case has been decided upon the evidence and the law or, on the contrary, upon arbitrary or extralegal considerations The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law."

¹⁷As argued by appellant; opening brief, Argument, III, pp. 13 ff.

apparent that the findings are faulty, uncertain, and ambiguous.

Having brushed aside with a mere shrug¹⁸ our argument that there is no sufficient finding of the terms of the oral contract, appellees devote the bulk of their argument¹⁹ to the matter of the finding on the amount of loss sustained. Again, however, they offer no interpretation of the findings on this point.²⁰

Appellees insist²¹ that Questa was competent to testify to the value of his barn, and that Williams was qualified to testify to replacement values because he was “a carpenter and contractor”. None of this has any bearing at all on whether the judgment is supported by the findings.²²

Appellees place reliance²³ upon a quoted headnote from *Hegard v. California Ins. Co.*, 2 CU 663, 11 P 594, which appears to support the view that a finding of loss sustained is sufficient, and that the trial court need not make a finding on the value of the building at the time of its destruction. We controvert the validity of this citation as authority on the following

¹⁸Appellees' brief, pp. 8-9.

¹⁹Pp. 9-14.

²⁰It would be of interest to know appellees' explanation of the amazing coincidence implicit in the assumption that the amount of the oral contract of insurance (which Questa insisted was \$7500) was \$4000, and the value of the barn destroyed was also exactly \$4000 (—a barn whose value, according to Questa, was \$15,000 or perhaps \$8000 [See, opening brief, pp. 26-7], and whose replacement cost was \$15,000 according to Questa or perhaps \$10,609.31 according to Williams [See, opening brief, pp. 26, 31]).

²¹Pp. 11-12.

²²It relates only to Argument, IV; our opening brief, pp. 25 ff.

²³P. 13.

grounds: (a) The pertinent language is found, not in a court opinion, but in a commissioners' decision rendered in 1886; (b) The remark was obiter dictum, since the commissioners recommended reversal for evidence improperly admitted; (c) A department of the California Supreme Court accepted the commissioners' decision, but the Supreme Court in bank granted a rehearing (72 C 535, 14 P 180) and wrote a new opinion, omitting any consideration of the sufficiency of the findings, and affirming the trial court's judgment as reduced by consent of the parties; (d) The commissioners' decision has never been cited as authority by any court on the point as to which it is relied on by appellees; (e) On this point, the dictum from the commissioners' decision is clearly erroneous.

It is well settled that a complaint in an action such as this must allege the value of the property destroyed, and that an allegation of the amount of loss or damage sustained is not an allegation of value.

3 *Bancroft's Code Pleading* 2616;

Emigh v. State Ins. Co. (Wash.) 27 P 1063,
1064;

Cross v. Home Ins. Co. (CC, ND Cal.) 154 F
679, 680;

Connecticut Fire Ins. Co. v. Williams (Okla.)
264 P 881, 882.

Appellees do not dispute this.²⁴ But they point out²⁵ that failure to allege value is cured by admission of

²⁴Indeed, they cite (pp. 9-10, 12) the first two authorities given above.

²⁵Pp. 9-10.

evidence as to value, and that Questa testified as to value without objection.²⁶ Granting all this, it has no bearing whatever on the sufficiency of the findings to support the judgment. As pointed out in our opening brief²⁷ there is no sufficient finding of the value of the property destroyed.

Appellant is entitled to know with certainty the basis of the trial court's decision on each of the two fundamental issues presented at the trial. We suspect that the trial court attempted to approximately "split the difference" between the \$7500 claimed by appellees and the denial of any liability by appellant, in rendering judgment for \$4000. This conclusion is fortified by the absence from the record of any supporting evidence that the amount of the contract was \$4000 or that the amount of the loss by fire was \$4000; by the strange circumstance that both the amount of the contract and the amount of the loss (neither of which had any bearing on the other) strangely turned out to be precisely identical figures; and by the use of the hesitant phrase "not less than" in memorandum opinion, findings, and judgment with relation both to the amount of the contract and the amount of the loss.

²⁶Questa was obviously competent to testify to the value of his own property, and an objection on the ground that value had not been properly pleaded would merely have resulted in an amendment to the complaint. Appellant's motion to strike Questa's value testimony was based upon far more substantial grounds than a mere technicality of pleading. (See our opening brief, Argument, IV, pp. 26-28.)

²⁷Argument, II, pp. 10-13.

III.²⁸

Appellees seem to attach considerable importance to the following bit of testimony given by Hassett:²⁹

“Q. Mr. Hassett, was any amount mentioned as regards the amount of premium or rate?
A. No, he [Questa] never inquired the rate, in fact he never asked me the rate for anything, just placed the insurance and we wrote the policy.”

Appellant has never raised the point that the relations between the parties were such as would prevent agreement by implication on certain features of an oral contract of insurance; for example, no doubt it could have been implied that the parties intended the standard form of fire insurance policy, the usual premium rate, and the customary length of term. However, it is still essential that there must have been a meeting of the minds on *the amount of insurance* to be written.

The barn had not been insured since “way back before the depression”, according to Questa,³⁰ and then for an unknown amount and in an unnamed insurance company. Clearly, therefore, either the parties expressly agreed upon the amount of insurance in so many words, or there was no meeting of the minds

²⁸Our opening brief (pp. 13 ff., Argument, III—Findings clearly erroneous as to existence and terms of contract.

²⁹R 160. Appellees’ brief contains this identical quotation from the record no less than four times—pp. 4, 17 (twice), and 18.

³⁰R 58-9.

and hence no contract.³¹ It follows that the authorities cited by appellees³² to the proposition that the terms of an oral contract of insurance may sometimes be implied from the circumstances, are inapposite. The proposition is elementary; but it does not aid appellees' case.

Appellees quote³³ Hassett's testimony to the effect that since the fire it occurred to Hassett that perhaps Questa intended Hassett to go to the ranch and place whatever amount of insurance he (Hassett) thought proper on the barn; and that, if he had so understood Questa at the time, he might have written \$2000 insurance on the barn.³⁴ We note: (a) Hassett

³¹This is not to say that the amount of insurance may not be implied under certain circumstances. Where property has been previously insured by the same agent or where it appears that the agent knew the amount of insurance customarily carried by the owner on that property, and where the other elements of an agreement to insure are found, an oral contract might result even though neither party made specific mention of the amount of insurance to be written. But such was not the case here.

³²Pp. 14-15.

³³Pp. 4-5; and again, pp. 17-18.

³⁴Appellees, however, have not quoted the record accurately. We do so now, italicizing the portions omitted by appellees (R 160-1):

“Q. Did you at any time, prior to the fire, write out any covering note or memorandum of insurance with regard to this barn? A. No, I did not, but since that time and after getting better acquainted with the way the people talk, I think maybe I should have made a mental memorandum.

Q. For how much insurance? A. Well, I think—in other words, I think if I got out there deliberately to write the insurance, I could have written another two thousand dollars.

Q. Was the amount of two thousand dollars ever mentioned between you and Mr. Questa prior to the fire? A. No, no amount was mentioned until after the fire.

The Court: Just a moment. I didn't exactly understand one expression of the witness. I would like to have you

was definite that no amount of insurance had been mentioned prior to the fire by either Questa or himself; (b) Hassett's testimony that, after the fire, he thought he might have written \$2000 insurance on the barn had he understood Questa differently, certainly does not furnish confirmation of Questa's testimony that there was a meeting of the minds at the figure of \$7500, nor does it support the \$4000 figure embodied in the trial court's findings.

IV.³⁵

The respective qualifications (or rather lack of qualifications) of Questa and Williams to testify to replacement cost of the barn are sufficiently treated in our opening brief. The authorities cited by appellees³⁶ are not in point.

Significantly, although appellees assert³⁷ that Questa "stated its [the barn's] value", the worthlessness of Questa's "value" testimony is conclusively

explain what you mean by 'mental memorandum'. A. Well, after growing better acquainted with Silvo as time went on, I think what Silvo meant for me to do the first time I met him was to go out and see the barn and whatever I thought right for it I should write on it without any further conversation with him and I didn't, unfortunately, understand his language at that time.

Q. You have related the conversations, I take it, Mr. Hassett, as they occurred, to the best of your recollection?

A. Yes sir.

Q. And what you said just now to the Judge is something you have thought about the conversations in your own mind later? A. Correct."

³⁵Our opening brief (pp. 25 ff.), Argument, IV—Evidence and findings on amount of loss by fire.

³⁶Pp. 20-3.

³⁷P. 21.

shown by appellees' own summary³⁸ of that testimony:

"Questa stated . . . that he valued the barn at fifteen thousand dollars and he stated it would cost fifteen thousand dollars to replace the barn." [!]

Appellees twice intimate that the blueprints of the barn (Exhibit "B"), although prepared by Williams, were properly admitted in evidence on the basis of Questa's testimony even if not on that of Williams.³⁹ This is untenable. Questa was the first witness called, and on his direct examination the following occurred:⁴⁰

"Q. Now this particular drawing that I show you, is that a reproduction of the barn? A. Yes.

Q. That is a reproduction as you remember it? A. Yes.

Q. And is there any doubt in your mind as to any of the sizes of timber, etc. that were placed herein? A. No. I think that is a perfect reproduction of the barn.

Mr. Boyle: We offer these particular drawings for identification, your Honor. Mr. Levit had the privilege of going over a set of the plans.

³⁸Pp. 2-3.

³⁹Appellees say (p. 20):

"Upon the testimony of Questa that plans were reproductions which had been admitted in evidence as plaintiff's Ex. E., page 113 of transcript, and no objection was interposed." [This is an exact quotation from appellees' brief. The exhibit reference is erroneous; the plans are Exhibit "B".]

And, again (p. 21):

"... And [Questa] having stated . . . that the . . . drawings were correct . . ."

⁴⁰R 41-2. This is the only testimony of Questa relative to the blueprints.

Mr. Levit: In the first place I make an objection to the admission of those blueprints.

Mr. Boyle: They are only offered for identification, so there is no use objecting.

Mr. Levit: Then we withdraw the objection . . . Clerk: Plaintiffs' B for identification."

There was no further reference to the blueprints until Williams took the stand and identified them, and they were admitted in evidence as Exhibit "B".⁴¹ When cross-examination developed Williams' complete lack of familiarity with and knowledge of the barn, appellant moved to strike the blueprints and the balance of Williams' testimony.⁴² The motion to strike should have been granted.⁴³

Dated, San Francisco, California,
June 9, 1943.

Respectfully submitted,

PERCY V. LONG,

BERT W. LEVIT,

WILLIAM H. LEVIT,

Attorneys for Appellant.

LONG & LEVIT,

HAWKINS, RHODES & HAWKINS,

Of Counsel.

⁴¹R 113.

⁴²R 131.

⁴³See our opening brief, pp. 29-31.

No. 10368

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LONG LAKE LUMBER COMPANY and F. D.
ROBINSON,
Respondents.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 348

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

MAY - 3 1943

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America
Before the National Labor Relations Board
Nineteenth Region
Case No. XIX-C-538

In the Matter of

LONG LAKE LUMBER COMPANY and
F. D. ROBINSON

and

INTERNATIONAL WOOD WORKERS OF
AMERICA LOCAL UNION No. 119, affiliated
with the CONGRESS OF INDUSTRIAL OR-
GANIZATIONS.

COMPLAINT

It having been charged by the International Woodworkers of America, Local No. 119, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the union, that the Long Lake Lumber Company and F. D. Robinson have engaged in and are engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act 49, Statute 449, hereinafter referred to as the Act, the National Labor Relations Board, hereinafter referred to as the Board, by its Regional Director for the Nineteenth Region, as agent of the Board, designated by the National Labor Relations Board Rules and Regulations, Series 2, Article IV, Section 1, hereby issues its complaint and alleges the following:

I.

The respondent Long Lake Lumber Company, hereinafter called respondent Long Lake, is a corporation organized and existing under the laws of the State of Washington, having its principal office and place of business in the City of Spokane, State of Washington, and is now and has been continuously engaged in the manufacture, production, sale, and distribution of lumber and lumber products. The respondent Long Lake owns and at all times hereinafter mentioned has owned large tracts of standing timber in the States of Idaho and Washington.

II.

Respondent Long Lake now is and at all times hereinafter referred to has owned and operated two sawmill plants located in the City of Spokane, State of Washington, engaged in the manufacture and production of lumber and lumber products.

III.

Respondent F. D. Robinson, hereinafter called respondent Robinson, conducts a logging enterprise situated at Caribou Basin, near Sand Point, County of Bonner, State of Idaho, where standing timber, which is owned by the respondent Long Lake, is felled, bucked, yarded, and loaded.

At all times herein mentioned said respondent Robinson has conducted and does now conduct said logging operations for the sole benefit of, and as the agent for and alter ego of, respondent Long Lake.

Respondent Long Lake did at all time herein men-

tioned and does now direct and control the said operations of the said respondent Robinson.

Said respondent Long Lake furnishes funds and equipment to said respondent Robinson which are necessary for the conduct of said logging operations situated aforesaid, by means of loans, or sales or leases of equipment and otherwise.

For many years last past said respondent Robinson has been and now is financially supported by and indebted to said respondent Long Lake.

Said respondent Robinson utilizes equipment, machinery, tools, and supplies owned and possessed by said respondent Long Lake in the conduct of its Caribou Basin logging camp.

Said respondent Long Lake has purported to contract and agree with said respondent Robinson whereby the said respondent Robinson agreed to perform certain operations for the benefit of said respondent Long Lake.

IV.

The respondents, in the course and conduct of said business at the Caribou Basin logging camp, cause and have continuously caused logs to be transported by common carrier engaged in interstate commerce from said logging camp to respondent Long Lake Lumber Company's sawmills at Spokane, Washington, for which such respondent Long Lake requires its logging superintendent, and various other agents and executives, to frequent the Caribou Basin Logging operation and determine how, when, and what logging shall be done, and supervise the

employment and the work of employes and fix and/or guide the said respondent Robinson's labor and log selection policies.

V.

The respondent Long Lake in the course and conduct of its business causes and has continuously caused substantially all of the products produced by it to be sold, shipped, and transported in interstate commerce from its sawmill plants in Spokane, Washington, to, into, and through States of the United States other than the State of Washington.

VI.

International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations, hereinafter called Local 119, is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

VII.

The employes of the respondents at their Caribou Basin logging camp, with the exception of supervisory officials, foremen, clerical, and office employes, constitute a unit appropriate for the purpose of collective bargaining in order to insure the aforesaid employes the full benefit of their right to self organization and to collective bargaining and otherwise to effectuate the policies of the Act within the meaning of Section 9, subdivision (b) of the Act.

VIII.

On or about June 6, 1939, a majority of the employes in the unit referred to in paragraph VII

above, designated Local 119 as their representative for the purpose of collective bargaining and said Local thereby was and now is the exclusive representative of all the employes in the aforementioned unit for the purpose of collective bargaining in respect to wages, hours, and other conditions of employment; and on or about June 7, 1939, and at all times thereafter, and particularly on or about June 20, 1939; July 5, 1939; July 10, 1939; July 14, 1939; July 16, 1939; and July 18, 1939, the respondents did refuse to bargain collectively with Local 119 as the representative of their employes in the aforesaid unit with respect to hours, wages, and other conditions of employment, although said bargaining was duly demanded by Local 119 as the exclusive representative of all the employes in the unit described.

IX.

By their refusal to bargain collectively with said union as alleged in paragraph VIII above, the respondents did engage in and have *engaged* in an unfair labor practice within the meaning of Section 8, subdivision (5) of the said Act.

X.

On or about June 7, 1939, respondents discharged from their employ at the Caribou Basin Logging Camp those employes whose names are listed in the schedule attached hereto marked Exhibit "A" and made a part hereof; and thereafter on or about July 14, 1939, and thereafter, hired or authorized the hiring of employes other than the employes named in

Exhibit "A" for the conduct of operations at their Caribou Basin Logging Camp.

The discharge of the said employees and the hiring or the authorization to hire new employees at the Caribou Basin Logging Camp was and is in furtherance of a design to avoid collective bargaining and to discourage membership in the union; and the respondents discharged and locked out the employees named in Exhibit "A" for the reason that said employees had joined and assisted Local 119.

XI.

On or about August 17, 1939, the respondents did discharge Cecil Chaney, Fred Chaney, A. J. Burford, and Charles Brodine, and did on or about August 21, 1939, discharge O. W. Haney and A. J. Waffle, and at all times since said dates refused to reinstate the above-named individuals and each of them for the reason that the above-named individuals and each of them joined and assisted Local 119.

XII.

By the acts and course of conduct set forth in paragraphs X and XI above, the respondents have discriminated and are discriminating with regard to hire and tenure of employment of said employees named in said paragraphs and have discouraged and are discouraging membership in said Local 119, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

XIII.

Since on or about June 6, 1939, the respondents by their officers, employes, and agents have by various acts and statements interfered with, restrained, and coerced their employes in the exercise of their right to self organization, to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection, in that respondents have among other things (a) questioned their employes as to their union membership; (b) advised their employes that their Caribou Basin Logging Camp would discontinue operations if said employes continued their membership in Local 119; (c) advised their employes that their Caribou Basin Logging operations would not operate so long as Local 119 requested the execution of a written agreement; and (d) attacked in a derogatory manner the leadership of Local 119, and its affiliated organizations.

XIV.

By the refusal of the respondents to bargain collectively with Local 119, as alleged in paragraph VIII above, by the shutdown of their Caribou Basin Logging Camp and by the knockout and discharge of their employes described in paragraph X above, and by the discharges of the individuals as alleged in paragraph XI, and by the acts and statements alleged in paragraph XIII of this complaint, and by various other acts and statements, and each of them, the respondents did interfere with, restrain, and coerce their employes in the exercise of the rights

guaranteed to them in Section 7 of said Act, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

XV.

The activities of the respondents as set forth in paragraph VIII, X, XI, XIII, and XIV above, occurring in connection with the operations of the respondents as described in paragraphs I, II, IV, and V of this complaint, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States of the United States and foreign countries and have led and tend to lead to labor disputes burdening and obstructing interstate and foreign commerce and the free flow of interstate and foreign commerce.

XVI.

The aforesaid acts of the respondents, Long Lake Lumber Company, and F. D. Robinson, described in paragraphs VIII, X, XI, and XIII above, constitute unfair labor practices within the meaning of Section 8, subdivisions (1), (3), and (5), and Section 2, subdivisions (6) and (7) of said Act.

Wherefore the National Labor Relations Board on this 17th day of February, 1940, issues its Complaint against the Long Lake Lumber Company and F. D. Robinson, the respondents herein.

[Seal]

ELWYN J. EAGEN,

Regional Director National Labor Relations Board,
Nineteenth Region, 844 Dexter Horton Building,
Seattle, Washington.

EXHIBIT "A"

Charles Brodine	Ray Stevens
A. J. Burford	Charles Stevenson
Charles C. Dingley	Nathan Way
A. W. Evans	Jack Waffle
Ted Early	Leon Wise
Ralph A. Feoco	Grant Robinson
Arthur Feoco	Fred Williams
J. L. Finley	Robert Yeazel
Dale Greer	Robert Barwise
O. W. Haney	Charles Berry
Martin Hansen	Ernest Berger
Stanley Harder	Arlie Chaney
Emery E. Hunt	Cecil Chaney
Clifford Joseph	Fred Chaney
Joel Joseph	Joe Dobrovec
Ura Kirtley	B. J. Durick
Charles Lisle	Albert Faurot
Burnell N. Lang	Harry Gunsalus
John J. McCarr	Al Hendrickson
Dwight Miller	William Henry
Robert Monett	Sidney Moody
Frank Mor	Frank Murphy
Neil Mardis	Earl Murphy
Greg Moore	Victor Norman
Mjalmar Olson	Cecil Porter
Curtis Peterson	H. A. Sperber
Ralph Peterson	C. C. Sperber
Granville Robinson	Mrs. Marie Sperber
Andrew Swenson	Cecil Ruyon
Boyd Stevens	C. E. Twist
Clyde Smith	

NOTICE OF HEARING

Please Take Notice that on the 11th day of March, 1940, at 10:00 o'clock in the forenoon, in the County Court House, Bonner County, Sandpoint, Idaho, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 2, Articles II, Section 23, on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Nineteenth Region, acting in this matter as agent of the National Labor Relations Board, an answer to the above complaint within ten (10) days of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 2, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Nineteenth Region on the 17th day of February, 1940.

[Seal]

ELWYN J. EAGAN

Regional Director, National Labor Relations Board,
Nineteenth Region, 844 Dexter Horton Building,
Seattle, Washington.

United States of America

Before the National Labor Relations Board

Case No. C-1729

In the Matter of

LONG LAKE LUMBER COMPANY and
F. D. ROBINSON

and

INTERNATIONAL WOODWORKERS OF
AMERICA, LOCAL UNION NO. 119, affiliated
with the CONGRESS OF INDUSTRIAL OR-
GANIZATIONS

MR. PATRICK H. WALKER and
MR. THOMAS P. GRAHAM, JR.,
for the Board.

MR. E. E. HUNT,
of Sand Point, Idaho, for the respondent Robin-
son.

MR. C. H. POTTS,
of Coeur d'Alene, Idaho, for the respondent
Long Lake.

MR. BLISS DAFFAN,
of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon charges and amended charges¹ duly filed by

(1) The original charges were filed on June 15 1939; amended charges were filed on July 5, 1939 and February 16, 1940, respectively.

International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Nineteenth Region (Seattle, Washington), issued its complaint, dated February 17, 1940, against Long Lake Lumber Company and F. D. Robinson, herein jointly referred to as the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondents and the Union.

The complaint alleged that Robinson conducted a logging enterprise in standing timber owned by Long Lake Lumber Company, herein referred to as Long Lake, and that he did so for the sole benefit of and as the agent for and alter ego of Long Lake; that Long Lake directed and controlled the Robinson enterprise, supervised the employment and work of employees employed by Robinson, and fixed and guided Robinson's labor and log-selection policies. With respect to the unfair labor practices the complaint alleged in substance that the respondent: (1) on or about June 7, 1939, and at all times thereafter, and particularly on June 20 and July 5, 10, 14, 16, and 18, 1939, refused upon request to bargain col-

lectively with the Union, which on such dates represented a majority of the respondents' employees within an appropriate unit; 2) on or about June 7, 1939, discharged and locked out 61 named employees because they joined and assisted the Union and on or about July 14, 1939, hired or authorized the hiring of others to take their places, thereby discouraging membership in the Union and furthering a design to avoid collective bargaining with it; (3) on or about August 17, 1939, discharged four named employees and on or about August 21, 1939, discharged two named employees because they joined and assisted the Union; and (4) by these and other acts, since on or about June 6, 1939, interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in the Act.

Robinson filed an answer to the complaint, dated February 27, 1940, in which he: (1) denied that he was the agent for and alter ego of Long Lake and alleged affirmatively that he was an independent contractor operating under a contract with Long Lake; (2) denied engaging in any unfair labor practices; and (3) alleged that on June 6, 1939, his logging operations were shut down because of bad weather and that the employees alleged by the complaint to have been discharged or locked out on or about June 7, 1939, were not discharged or locked out because of their union membership or activity but were released until such time as inclement weather conditions existing at that time permitted the resumption of operations; and that when such

operations were resumed he offered reemployment to all of said employees that could be reached.

Long Lake filed an answer to the complaint dated February 28, 1940, in which it: (1) denied that Robinson was its agent and alter ego and alleged affirmatively that Robinson was an independent contractor operating under a contract with it; and (2) denied engaging in any unfair labor practices.

Pursuant to notice, a hearing was held in Sand Point, Idaho, from March 11 to 21, 1940, before Joseph L. Hecktoen, the Trial Examiner duly designated by the Acting Chief Trial Examiner. The Board and the respondents were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the hearing, the Trial Examiner granted without objection, motions made by counsel for Robinson to amend his answer in minor particulars. During the course of the hearing, the Trial Examiner made numerous rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On November 2, 1940, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon all parties, in which he found that the respondents had engaged and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Sec-

tion 2 (6) and (7) of the Act. He recommended that the respondents be ordered to cease and desist therefrom and that they take certain affirmative action in order to effectuate the policies of the Act. He also recommended that complaint be dismissed in so far as it alleges discrimination within the meaning of Section 8 (3) of the Act with regard to the hire and tenure of employment of Albert Faurot and Al Hendrickson, with respect to the discharges of Cecil Chaney, Fred Chaney, A. J. Burford, and Charles Brodine, on or about August 17, 1939, and with respect to the discharges of O. W. Haney and A. J. (Jack) Waffle on or about August 21, 1939. Thereafter, on December 2, 1940, the respondent Long Lake and on December 3, 1940, the respondent Robinson and the Union, filed exceptions to the Intermediate Report; the respondents also filed briefs in support of their exceptions. None of the parties requested leave to argue orally before the Board.

The Board has considered the exceptions and briefs filed by the parties and except as they are consistent with the findings of fact, conclusions of law, and order set forth below, finds the exceptions to be without merit.

On February 11, 1941, International Woodworkers of America, Local No. 239, filed a motion requesting that Local No. 239 be substituted for Local Union No. 119. Pursuant to notice to appear and show cause why said motion should not be granted, duly served upon all the parties, and no

cause having been shown by the return date, on June 9, 1941, the Board ordered that the name International Woodworkers of America, Local No. 239, be substituted for the name International Woodworkers of America, Local Union No. 119. Both are herein referred to as the Union.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondents

The respondent, Long Lake Lumber Company, is a Washington corporation, having its principal place of business in Spokane, Washington, where it is engaged in the manufacture and sale of lumber. In 1939 it obtained approximately 37,000,000 feet of timber for manufacture, at least 7,900,000 feet thereof being obtained outside the State of Washington. In 1939 it sold approximately 50,000,000 board feet of manufactured lumber, between 60 and 75 per cent of such sales being made to customers outside the State of Washington.

The respondent, F. D. Robinson, is an individual engaged in logging at Caribou Basin, Sand Point, Idaho. In 1939 he produced approximately 7,900,000 feet of timber, all of which was then transported to Long Lake in Spokane, Washington.

On June 28, 1935, Long Lake entered into a contract with Humbird Lumber Company by which the latter sold to Long Lake standing timber in certain described sections in Bonner County, Idaho (the region being known as the Caribou Basin). The

contract specified the manner in which timber should be cut.

In 1935 and 1936, Long Lake built a lumber camp and roads at Caribou Basin, engaging the respondent Robinson for this task. Thereafter Robinson began logging the tract for Long Lake under a written agreement by the terms of which Robinson was paid in accordance with the amount of logs produced.² The agreement, terminable by either party upon 30 days' written notice, further provided that all logging done by Robinson should be in accordance with the provisions of the existing contract between Humbird Lumber Company and Long Lake. Under the agreement Robinson secured from Long Lake advancements to defray a substantial portion of the operating expenses of his logging operations, which amounts were thereafter charged off against the amounts to be paid him under the terms of the agreement. Logging operations were conducted by Robinson at Caribou Basin during the years 1937, 1938, and 1939, all logs produced being shipped to Long Lake at Spokane. In 1938, 11,821,830 feet,

(2) The written agreement between Robinson and Long Lake covering logging operations at Caribou Basin for the year of 1939, was introduced in evidence. It was agreed that substantially similar agreements were executed between the parties at the beginning of each year during which Robinson logged timber at Caribou Basin. The agreement for 1939, dated January 26, 1939, was in the form of a letter written in duplicate and addressed to Robinson which provided that Robinson should signify his acceptance of the terms thereof by signing and returning the original to Long Lake.

and in 1939, 7,900,000 feet, of timber were shipped from Caribou Basin to Long Lake at Spokane. As of January 26, 1939, as a result of advancement and operations for the preceding years, Robinson owed Long Lake \$24,934.06.

James Brown, Sr., is president of Long Lake. Long Lake's woods superintendent, J. E. Breen, and assistant woods superintendent, James Brown, Jr., the son of James Brown, Sr., regularly inspected the logging operations at Caribou Basin to ascertain whether or not the provisions of the contract between Long Lake and Humbird Company regarding logging the timber were being complied with.

In June 1939 there were approximately 95 employees in the logging camp at Caribou Basin.

II. The organization involved

International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondents at Caribou Basin.

III. The unfair labor practices

A. Events preceding the shut-down; the shut-down on June 7

The camp at Caribou Basin was opened for logging operations in the late spring of 1939 and the Union initiated an organizational drive among the employees in the camp.

Early in June, during this organizational drive, Fred Chaney, one of the employees, asked Robinson

whether he, Chaney, should join the Union. Robinson replied that Chaney would have to use his own judgment, but asked Chaney who had been advocating the Union. Chaney told Robinson the names of those who had been soliciting Chaney's son to join.

On June 5, 1939, according to Leon Wise, who was one of the most active advocates of the Union, he was called into Robinson's office where he met with Robinson and Arden Davis, Robinson's bookkeeper. Wise testified that Robinson stated that he understood that Wise had been "organizing for the C.I.O. in this camp" and that if it were true "I want to fire you and every damned man you gave a card to. And if there is another fellow working with you here, I want to get him too." Wise testified that he replied that Robinson "might as well fire them all, because, as far as I know, the camp is organized 100 per cent," and that Robinson then threatened to "shut the camp down" and stated that Wise was a "sucker" and that "after J. L. Lewis got a couple of more millions," Wise "would find out." Wise testified that he asked Robinson whether he thought it was "fair and square to shut the camp down" when no demands had yet been made by the Union, to which Robinson replied, "The demands will come later, and I cannot operate with that kind of organization at all." After some further discussion Robinson stated that he would not close the camp "so long as they took out 10,000 feet a day."

Both Robinson and Davis denied the above testimony of Wise. The Trial Examiner, who had an

opportunity to observe the witnesses, found Robinson an evasive and reluctant witness and Davis unconvincing. On the other hand, the Trial Examiner found Wise to be a forthright witness and credited his testimony concerning the foregoing conversation. We find that the foregoing conversation between Wise and Robinson occurred substantially as testified to by Wise.

On June 6, 1939, a jammer used for the hauling of logs broke down and Robinson laid off the jamming crew. This incident served to give impetus to the organizational drive. Wise met with Herbert Johnson, the organizer for the Union, and it was determined by them to hold a union meeting that afternoon. Wise then went to advise the men in the camp of the scheduled meeting and, while in the bunkhouse so occupied, was accosted by Robinson. According to Wise, Robinson stated, "Boys, I understand you are holding a meeting in this camp. There will be no God damned meeting held in this camp tonight, or any other time. This is my camp, * * * I want you to get out and get off of it." According to Wise, Robinson then said, "Why don't you hire a union hall somewhere? This is no union hall. Why do you want to pick on me; why don't you organize with Mr. Johnson at the Diamond?" Wise then attempted "to cool him off," and Robinson then told Wise to "go ahead and hold your meeting." Wise testified further that Johnson arrived at about that time and was introduced by Wise to Robinson; that Johnson advised the latter that the union committee would like to

meet with him after the union meeting; that Robinson agreed to meet with the union committee and advised Johnson that James Brown, Jr., "will also be here and talk to you"; and that when Johnson inquired as to the latter's identity Robinson explained that "His father owns all this stuff here."

Robinson denied the above testimony of Wise. The Trial Examiner, however, found Robinson to be an unreliable witness and credited Wise's testimony, as we do. We find that the foregoing conversation occurred substantially as testified to by Wise.

Shortly after the foregoing conversation Robinson approached C. C. Sperber, the camp cook, and remarked, "We might be going to have some excitement in the camp as there is going to be a union meeting for organization."

The Union meeting was held at about 4:30 p. m. on June 6 and a committee was there selected to confer with Robinson. Immediately after the meeting, the committee, together with Johnson, the organizer for the Union, conferred with Robinson in the latter's office for the purpose of presenting certain demands. Wise testified that Johnson asked Robinson "if he recognized these men as a committee of the I.W.A., Local 119, this committee representing a majority in his camp," to which Robinson answered, "Well, what else can I do? They are all there." Greg Moore, a member of the union committee, testified that Johnson said, "This is the committee representing the workers in this camp; and will you recognize these men as a com-

mittee?" and that Robinson "agreed to recognize that Committee representing the majority of the workers." Robinson in his testimony, denied that Johnson asked for recognition in these terms, or that he, Robinson, at any time agreed to or did recognize the Union. We find, as did the Trial Examiner, that on this occasion Robinson did in fact recognize the union committee as the representative of a majority of the employees at the camp.

The committee, through Johnson, presented written grievances to Robinson. The Union asked that members of the jammer crew, whose jammer had broken down the same day, be reinstated. Robinson said the men had not been discharged, but were temporarily laid off because the jammer had broken down, and agreed to reemploy them within 2 or 3 days. The Union demanded that employees at the camp be rehired from year to year before new employees were put on the pay roll. Robinson agreed to employ former employees in so far as jobs which such men were capable of performing, were available. The Union accepted this proposal. Agreement was also reached on the Union demand that "cedar makers" be rehired, Robinson agreeing to do so in so far as work was available for them. Robinson agreed to hire local help before going outside the camp area for employees. Union demands for a "bull cook," clean blankets, connecting of the showers, repair of leaky roofs in the bunkhouses, and starting the electric light plant were also agreed to by Robinson. At the end of the meeting, Johnson shook hands with Robinson and said, "Mr. Rob-

inson, you have an organized camp. We have got lots of them. We will get along fine. I am assured we will get along fine hereafter." Robinson replied, "Yes, I think so; I hope so." Thereafter, the committee reported the results of the meeting to the Union members at the camp the same evening.

As Wise was leaving the camp after the Union meeting on the evening of June 6, he observed James Brown, Jr., arrive. Robinson, Brown, Jr., and Johnson conferred in Robinson's office that evening at about 7 o'clock. The record does not indicate the subject matter of their conversation.

Although Brown, Sr., and Robinson testified that they could not recall having conferred by telephone on the evening of June 6, the record shows that two telephone calls were received at the Robinson camp on that evening, one from the home of Brown, Sr., in Spokane, shortly before 7 p. m., and another from the Spokane City Club, of which Brown, Sr., was a member, between 7 and 8 p. m. The latter call was placed by Brown, Sr., and received by Robinson. We find that Long Lake communicated with Robinson on the evening of June 6, at or about the time that Robinson was meeting with the committee of the Union.

Early in the morning of June 7, 1939, Robinson informed the employees that the camp was being shut down and instructed them to turn in their tools and blankets. The men turned in their equipment, were paid off, and with two or three exceptions vacated the camp.

B. Events subsequent to the shut-down;
the bargaining conferences

About four in the afternoon of June 7, the Union held a meeting in Sand Point and voted to go out on strike because of the shut-down. On June 15, 1939, the Union filed charges of unfair labor practices with the Regional Director of the Board. During the last week in June, a Union committee consisting of Clyde Smith, Amon Garvin, Martin Hansen, Greg Moore, A. J. Burford, Leon Wise, and Johnson, met on four or five occasions with Robinson and his counsel, Everett E. Hunt, in Sand Point.³ Board Field Examiner A. C. Roll attended some of or all the meetings. At the first or second meeting, the Union proposed entering into a written stipulation to be signed by the Union and Robinson, providing that the Union withdraw its charges and abandon the strike upon condition that Robinson reemploy the strikers, reopen the camp as soon after July 5 as possible, and, upon proof by the Union of its majority, recognize it as sole collective bargaining agent for the employees at the camp. Under the proposal the Board was to superintend a check of the union membership applications against the June 5 Robinson payroll and certify a majority, if found. While the parties orally agreed to these terms, the stipulation was not executed, Hunt stating that "Robinson would not sign anything."

Roll then suggested that the Union and Robinson write substantially similar letters to the Regional

(3) The record is not altogether clear as to the time, number, or place of these meetings.

Director, embodying the agreement described above. The Union prepared a letter, as did Robinson. The Robinson letter contained the following:

At the present time, we do not know how many of the men have affiliated with the Union and therefore we have not recognized any particular group as an exclusive bargaining agency for our employees. However, after work is resumed, it is our intention to recognize the Union which shows conclusively that it has within its membership a majority of our employees.

The Union rejected Robinson's letter, contending that it was not in accordance with the agreement. Neither letter was sent.

At one of the meetings, the Union proposed that a card check be made by the parties themselves and that the question of representation be settled between them. Hunt began a check of the union applications against the June 5 pay roll, but expressed doubt as to the authenticity of the signatures, suggesting that the applications might have been signed under duress, and insisted on making a written list of the names on the applications. Before Hunt had completed his check, Johnson removed the cards.

Subsequently, it was agreed that the Union committee would meet with Robinson with neither Hunt nor Johnson present. At this meeting, Wise presented the Union application cards to Robinson and pleaded with him to check them against the pay roll. Robinson's only reply was, "Boys, I have agreed to meet with you but I am not saying a word, I am

not allowed to say anything. You talk all you want to and as long as you want to, and I will sit here and listen to you. I am not saying a word; my hands are tied."

At the last meeting between the Union committee, Robinson and Hunt, it was agreed that the Board would conduct a consent election on July 6. The Union, however, for some reason undisclosed by the record, withdrew from this agreement, and the election was never held.

C. The picketing; the reopening of the camp

On the morning of July 6 the Union established a picket line on the road leading into the camp. On about July 11, Robinson appeared at the picket line with a number of local law enforcement officials. Robinson told the officials that the picket line was preventing the entrance into the camp of several employees who wished to go to work. Several men who had apparently come up with Robinson with the intention of going to work, replied that they wished to go to work but would not go through the picket line. The sheriff, Warren Rapp, then asked both the picketers and those who had intended to go to work how many of them were Union members and substantially all present indicated that they were. On the witness stand, Wise recounted the following incident at this point. He testified:

[Rapp] said "Why don't you boys try to get together with Frank [Robinson] and try to settle the thing?" And Mr. Johnson and I said, "Sure, we can settle it right here and now. Here is the Long Lake Lumber Company crew

on both sides and we will hold a card check right now." And Frank was walking up and down and Frank said, "I won't recognize the Union." And Mr. Johnson and I then talked to him and said, "Let us hold an election in the road." And all he would say was, "I won't recognize the Union."

This testimony of Wise, although denied in substance by Robinson, was corroborated by two other witnesses for the Board. We credit, as did the Trial Examiner, Wise's testimony regarding the incident.

Robinson testified that when he was attempting to take the men through the picket line on July 11, he made an offer of reinstatement to all of the striking employees through Johnson but that Johnson refused such offer on behalf of the employees by stating that the men would not return to work until Robinson recognized the Union. His testimony in this respect was undenied and we, therefore, find that such an offer was made.

On July 14, 1939, Robinson again appeared at the picket line with a newly recruited crew of men. On this occasion, with the aid of the State police, the crew succeeded in passing through the picket line. The camp began full operation on about July 20, 1939, with many of the strikers returning to work at or about that time. While the record does not disclose when the strike was terminated by the Union, it appears from Robinson's testimony that Union picketing was still in progress on July 29.

D. Conclusions regarding the shut-down

The complaint alleges that the respondents shut down the camp on June 7, 1939, in order to avoid collective bargaining with the Union, and that the respondents thereby discriminated in regard to the hire and tenure of employment of 61 employees⁴ who were locked out of the camp because of the shut-down. Robinson contends that the camp was shut down on June 7 because continued rain had rendered it impossible to continue logging operations.

During the latter part of May and the early part of June 1939, the amount of rain precipitation at Robinson's camp was somewhat higher than average, and this heavy rainfall had made trucking operations impracticable. It further appears that it was not practical to continue cutting timber until some of that already cut and lying in the woods had been trucked out. Even so, we are not satisfied from the evidence that these conditions prompted Robinson's sudden decision on June 7 to shut down the camp entirely. Although the amount of rain precipitation at Caribou Basin had been even higher in June 1937 than it was in June 1939 and there were days when the men could not work because of the rain during the former year, Davis testified that the men had not been paid off in 1937 and the camp had not been vacated. Furthermore, other contractors in the vicinity of Caribou Basin continued their

(4) With the exception of two employees as to whom the complaint is dismissed below, these employees are listed in Appendix A and B.

operations to some extent during June 1939 notwithstanding the fact that it was no more possible for them than for Robinson to engage in trucking operation. Indeed, so far as the record reveals there was no precedent whatsoever for the complete shut-down of the camp during the logging season because of weather conditions. We find, as did the Trial Examiner, that the shut-down did not occur for this reason. On the other hand, the circumstances surrounding the shut-down, its taking place immediately after the organization of the Union and its presentation of demands to Robinson, together with the hostility exhibited by Robinson toward the Union upon learning of its organizational activity and his threat at that time to shut the camp down because of such activity, indicate that the shut-down was prompted by a desire to avoid collective bargaining with the Union and that Robinson took advantage of the adverse operating conditions caused by the excessive precipitation merely to close the camp down in order to defeat the Union.

This conclusion finds confirmation in testimony concerning conversations held by Robinson and James Brown, Jr., with two employees of the camp on the day of the shut-down. J. L. Finley, an employee, testified that he came to the camp on June 7, shortly after the shut-down, there met Robinson and James Brown, Jr., and asked them "what was going on." According to Finley, either Robinson or Brown advised him that a strike had been called on the previous day and demands had been made by the Union for an increase in wages and general

camp improvement which Robinson had agreed to; that on the morning of June 7 the Union had made demands for further increases in wages "so he had shut the camp down" because it could not be operated on the basis of the new demands. Finley testified further that James Brown, Jr., then remarked that Long Lake's mills at Spokane were "organized of local fellows" and that "If you fellows had an organization of that kind amongst yourselves, we would recognize that sort of a union."

Likewise, Wise testified that at about 5 p. m. on June 7 he met James Brown, Jr., in Sand Point and told him that the Union had voted to strike earlier in the afternoon. According to Wise, Brown remarked that Robinson was indebted to Long Lake in the sum of \$34,000 and to a bank in the sum of \$10,000 and that "there isn't any chance of our getting our money back. The job is too large for him; there is too much friction between Mr. Robinson and the camp, and he is not the man to handle that job; we are going to take Frank and put him on another job." When Wise inquired regarding what disposition was to be made of Robinson's contract with Long Lake, Brown stated that Robinson had no contract but was "just a gypo owner."⁵ Wise testified further that Brown then stated "that it was all right for you fellows to organize," that "you could have got together here and formed a union of your own and we would have helped you"; and

(5) A gypo is, roughly, a subcontractor who uses his own equipment on the job; he is considered to be an employee.

that "we get along fine with the men in the mill and never have any trouble and we could have got along the same here, but you fellows didn't realize the kind of organization you have joined, you could not have done any worse; even the A. F. of L. would have been better than the thing you got into." After some further conversation, according to Wise, Brown remarked that "Dad has spent \$6,000 on me during the past year investigating the different labor organizations and how it was affecting business, but I know we cannot operate with your kind of organization, and we will shut her down."

Brown, Jr., denied the conversation testified to by Finley; Robinson did not testify on the subject. Brown, Jr., also denied the remarks attributed to him by Wise. The Trial Examiner, who had an opportunity to observe the witnesses, was impressed with the truthfulness of Wise and Finley, but found Brown, Jr., to be evasive and unconvincing. For this reason, and because the testimony of Wise and Finley is consistent with all the other events in the case, we credit their testimony and find, as did the Trial Examiner, that the foregoing conversations occurred substantially as testified to by them.

Upon the basis of the foregoing remarks of Robinson and James Brown, Jr., and the entire course of events following the organizational activity on the part of the Union, we find, as did the Trial Examiner, that the respondents shut down the camp on June 7 in order to prevent organizational activities among the employees and collective bargain-

ing with the Union, and that by such action, they discriminated in regard to the hire and tenure of employment of the employees listed in Appendices A, and B, who were locked out of the camp because of the shut-down, thereby discouraging membership in the Union and interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that the strike called by the Union on June 7, 1939, was occasioned by the respondents' unfair labor practices in thus shutting down the camp and locking out their employees.

Albert Faurot was hired for a specific period and was discharged on June 5, at the completion of this period. Al Hendrickson was one of the two or three employees who continued to work during the shut-down. Accordingly, neither Faurot nor Hendrickson, both alleged in the complaint to have been discriminated against, should be included in that category. For this reason they are not named in Appendices A or B and the complaint will be dismissed as to them.

E. Conclusions regarding the bargaining conferences; the refusal to bargain

(1) The appropriate unit

The complaint alleges that the respondents' employees at the Caribou Basin logging camp, except supervisory officials, foremen, and clerical and office employees, constitute a unit appropriate for the purposes of collective bargaining. Neither of the respondents contested this allegation at the hear-

ing. We find that the respondents' employees at the Caribou Basin logging camp, excluding supervisory officials, foremen, and clerical and office employees, at all times material herein constituted and that they now constitute a unit appropriate for the purposes of collective bargaining, and that said unit insures to the employees of the respondents the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

(2) Representation by the Union of a majority
in the appropriate unit

Robinson's pay roll shows 93 employees in the appropriate unit as of June 6, 1939,⁶ the date of the first meeting between Robinson and the Union. As of this date, 51 employees within the appropriate unit had signed applications for membership in the Union and designated it as their "sole collective bargaining agent." We have found above that the respondents' action in shutting down the camp

(6) The pay roll introduced into evidence was dated June 5. The name of Albert Fauret appears on this pay roll but is not included in the computation, since as stated above he was dismissed on June 5. The names of the jammer crew that was laid off are included, because as stated by Robinson, they had been merely laid off. The names of Arden Davis, bookkeeper and office manager, and Jack Bopp, Davis' assistant, also appear on the pay roll but are not included within the appropriate unit. Victor Norman's name is not on the pay roll of June 5, but he entered the respondents' employ on June 6, and is accordingly included within the appropriate unit.

on June 7, 1939, constituted an unfair labor practice. We have also found that the strike beginning on that date was occasioned by the respondents' unfair labor practices in thus shutting down the camp and locking out their employees. Such strike constituted a labor dispute and the employees who were in Robinson's employ on June 7,⁷ whose work ceased as a result of said labor dispute and of the respondents' unfair labor practices, remained employees within the meaning of Section 2 (3) of the Act and continued to constitute the appropriate unit. Twelve more employees within the appropriate unit signed application cards between June 7 and June 12, 1939, and three more signed application cards on July 5, about the date when the negotiations between Robinson and the Union broke down.

We find that on June 6, 1939, and at all times thereafter, the Union was and that it is the duly designated representative of a majority of the employees in the appropriate unit. Pursuant to Section 9 (a) of the Act, the Union was and is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(3) The refusal to bargain

We have found above that on June 7, 1939, after a preliminary bargaining conference, the respond-

(7) Including the jammer crew laid off on June 6. See footnote 4, *supra*.

ents shut down the camp and locked out their employees in order to avoid further bargaining with the Union. Their action in thus shutting down the camp was tantamount to a refusal to bargain with the Union on that date, and we find that such action did constitute such a refusal.⁸

At the conference with the Union on the evening of June 6, Robinson raised no question as to the Union's majority but, on the contrary, expressed himself as satisfied that the Union did represent a majority. After the shut-down, Robinson and his attorney, Hunt, in conferences with the Union persistently questioned the Union's majority and placed every obstacle in the path of the Union's attempts to show a majority. It is apparent from their conduct that their insistence upon technicalities was not the result of honest doubt as to the Union's designation as bargaining agent by a majority of the employees, but was motivated, on the contrary, by their desire to delay and prevent bargaining negotiations.⁹ The most striking evidence of

(8) See *Matter of Atlas Mills, Inc. and Textile House Workers Union No. 2269, United Textile Workers of America*, 3 N.L.R.B. 10; *Matter of Edward F. Reichelt, Robert J. Hill and Russel J. Jensen, doing business as a co-partnership under the name and style of Paul A. Reichelt Co. and Chicago Fur Workers Union, Local No. 45*, 21 N.L.R.B. No. 262; *Matter of United Dredging Company, New Orleans, Louisiana, and Inland Boatmen's Division, National Maritime Union, Gulf District, affiliated with the C.I.O.*, 30 N.L.R.B., No. 118.

(9) *National Labor Relations Board vs. Remington Rand, Inc.*, 94 F. (2d) 862 (C.C.A. 2), enf'g

this attitude lies in Robinson's conduct at the conduct at the conference at which neither Johnson nor Hunt was present, when Robinson insisted that he was there only to listen, and had nothing to say in reply to any of the Union's proposals.

We are convinced that at none of the conferences after the shut-down, did Robinson intend to bargain with the Union and that his expressed doubts as to the Union's majority were not raised in good faith but rather as obstacles and hindrances to delay and prevent any bargaining conferences. That the Union withdrew from the proposed election on July 6 does not affect this conclusion. It is sufficient to note that the Union's withdrawal from the July 6 election came after Robinson had already locked out the employees and otherwise manifested his hostility toward the Union and his unwillingness to bargain with it.

We find that the respondents on June 7, 1939, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of their employees in the appropriate unit, and

as med. Matter of Remington Rand, Inc. and Remington Rand Joint Protection Board of the District Council Office Equipment Workers, 2 N.L.R.B. 626; National Labor Relations Board vs. Chicago Apparatus Co., 116 F. (2d) 753 (C.C.A. 7) enf'g Matter of Chicago Apparatus Company and Federation of Architects, Engineers, Chemists and Technicians, Local 107, 12 N.L.R.B. 1003; Matter of United Dredging Company, New Orleans, Louisiana and Inland Boatmen's Division, National Maritime Union, Gulf District, affiliated with the C.I.O.. 30 N.L.R.B., No. 118.

thereby interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that the strike called by the Union on June 7, 1939, because of the respondents' action in shutting down the camp and locking out the employees, was continued by the Union from and after July 11, 1939, when the respondents attempted to reopen the camp, because of the respondents' refusal to recognize and bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit.

F. Other interference, restraint, and coercion

We have found above that the respondents, by the lock-out of their employees on June 7, 1939, and their subsequent refusal to bargain with the Union, interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act. Other instances of interference, restraint, and coercion are also recited above. These appear in Robinson's and Brown, Jr.'s conversations with Wise and Finley on June 6 and 7, in which the former attacked the Union and praised the virtues of an unaffiliated labor organization.

The record contains other instances of interference, restrain, and coercion, which were undenied. At some date subsequent to June 6 Robinson told Fred Chaney, an employee, that he would not recognize the Union and that "he would kill the damned Union anyway." About July 12, 1939, while the camp was still shut down, Robinson met Frank

Mor, an employee, in a saloon in Sand Point and said to him, "That is what you are down here for, because you signed up with the C.I.O.." the inference plainly being that Mor was out of work because he was a member of the Union. On about July 26, 1939, after the camp had reopened, Robinson saw Frank Murphy, who was wearing a Union button while at work in the woods, and said to him, "Well, I see you are wearing your [C.I.O.] button . . . You and your union button won't be here very long."

We find that by the foregoing statements and actions, the respondents interfered with, restrained, and coerced their employees the exercise of the rights guaranteed in Section 7 of the Act.

G. The alleged discriminatory discharges
after the reopening of the camp

The complaint alleges that during August, after the reopening of the camp, Robinson discharged Cecil Chaney, Fred Chaney, A. J. Burford, Charles Brodine, O. W. Haney, and A. J. (Jack) Waffle because they joined and assisted the Union, and thereby discriminated in regard to their hire and tenure of employment. No evidence supporting these allegations of the complaint was introduced and we will, accordingly, order that they be dismissed.

IV. The responsibility of Long Lake for
the unfair labor practices

The complaint alleged that Robinson conducted the logging enterprise at Caribou Basin for the sole benefit of and as the agent for Long Lake,

that Long Lake directed and controlled the enterprise, supervised the employment and work of employees employed by Robinson, and fixed and guided Robinson's labor policies, and that Long Lake participated in the unfair labor practices at Caribou Basin. Both Long Lake and Robinson denied these allegations and alleged affirmatively that Robinson was an independent contractor for Long Lake.

As has been stated above, the agreement between Robinson and Long Lake provided that Robinson log timber bought by Long Lake from Humbird Lumber Company and that Robinson should conduct such logging operations in accordance with the provisions of the contract between Long Lake and Humbird. Since said agreement also provided that it could be terminated by either party upon 30 days' notice, ultimate control over Robinson's logging operations was vested in Long Lake. In order to insure Robinson's logging the timber in accordance with said contract, Long Lake exercised an overall supervision over his logging operations, and the employees engaged therein through Breen, its woods superintendent, and James Brown, Jr., its assistant woods superintendent. While James Brown, Jr., at the hearing, denied that he had any authority over the employees engaged in Robinson's logging operations, he testified that during his supervision of said operations he reported employees whom he found doing improper work either to their "straw bosses" or to Robinson.

It is also clear from the events which have been detailed above that, in addition to exercising gen-

eral supervision over the work of employees engaged in the logging operations, Long Lake also controlled, to a large extent, Robinson's relations and dealings with said employees. When Robinson was first requested to meet with the Union, he informed its spokesman that he would meet with the Union committee later in the day and that Brown, Jr., whose father "owns all this stuff," would also be present to confer with the committee. Although Brown, Jr., did not arrive in camp in time to be present when the committee met with Robinson, upon his subsequent arrival he and Robinson conferred with Johnson, the union organizer.

Moreover, it is apparent from the entire course of events of June 6 and 7, and we find, that Long Lake participated in and directed the decision to shut down the camp. When the union committee met with Robinson on the evening of June 6, he agreed to recognize the Union as bargaining representative of the employees and did bargain with it as such. It is significant that he gave no indication at that time, or any time prior thereto, of any intention of shutting down the camp. However, after Brown, Jr.'s arrival in the camp and after receiving a telephone call from Brown, Sr., Robinson suddenly made the unusual decision to shut down the camp. Other indications of Long Lake's participation and influence in Robinson's decision to shut down the camp and his change in attitude toward collective bargaining with the Union thereafter, are contained in the testimony of Wise and Finley, set out above. Brown, Jr.'s statement to Finley on the

day of the shut-down to the effect that if the employees had an organization of "local fellows," "We would recognize that sort of a union," and his further statement to Wise on the same day to the effect that Long Lake could not operate "with your kind of organization, and we will shut her down" clearly show that both Robinson's decision to shut down the camp and his persistent refusal thereafter to recognize the Union—after having done so without question on June 6 before he had an opportunity to confer with Long Lake—were the result of instructions received from Long Lake. A further indication of the extent to which Robinson's relations and dealings with his employees were controlled by Long Lake is found in Robinson's statement made to the union committee, on the occasion when he met with them alone on or about June 26, to the effect that he had agreed to meet with the committee but was not permitted to say anything because "my hands are tied."

Under all the circumstances, we find, as did the Trial Examiner, that, since Long Lake controlled and directed Robinson's relations with his employees, Long Lake was and is an employer of the employees at Caribou Basin engaged in logging operations within the meaning of Section 2 (2) of the Act.¹⁰ We further find that Long Lake, by the actions of Robinson as directed and controlled by

(10) Matter of H. F. Wilcox Oil and Gas Company; Wilcox Refining Division and/or W. M. Fraser, and Oil Workers International Union, Local 257, 28 N.L.R.B., No. 19.

its officers, as well as by the actions and statements of James Brown, Jr., participated in the unfair labor practices heretofore found to have been committed by Robinson and thus discriminated in regard to the hire and tenure of employment of the employees listed in Appendices A and B attached hereto, thereby discouraging membership in the Union, that Long Lake, on June 7, 1939, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and interfered with, restrained, and coerced said employees in the exercise of the rights guaranteed in Section 7 of the Act.

V. The effect of the unfair labor
practices upon commerce

We find that the activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. The remedy

Having found that the respondents have engaged in certain unfair labor practices, we will order them to cease and desist therefrom and to take certain affirmative action which we find necessary to effectuate the policies of the Act.

Having found that the respondents on June 7, 1939, and at all times thereafter, refused to bargain collectively with the Union as the representative of their employees, we will order the respondents upon request to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit.¹¹

(11) The record shows that the Union represented a majority of the employees in the appropriate unit from at least June 6 to July 20, 1939, when the camp reopened. Thereafter, the respondents hired a considerable number of new employees and so far as appears from the record may have hired additional new employees for the logging season of 1940. The record does not show how many, if any, of these new employees joined the Union. The Board, however, has consistently held that an employer cannot escape his obligation to bargain with a union representing a majority of employees at the time of a refusal, because of a subsequent change in the personnel of that unit, where the employer's own unfair labor practices have prevented the Union from increasing its membership from among the ranks of the new employees. *Matter of Bloomfield Manufacturing Company, et al. and Metal Polishers, Buffers, Platers and Helpers International Union, Local #6*, affiliated with American Federation of Labor, 22 N.L.R.B., No. 10; *Matter of American Range Lines, Inc. and Marine Engineers' Beneficial Association*, 13 N.L.R.B. 139. See also *International Association of Machinists v. National Labor Relations Board*, 311 U.S. 72, aff'g 110 F. (2) 29 (C.A. for D.C.) enf'g *Matter of The Serrick Corporation and International Union United Automobile Workers of America, Local No. 459*, 8 N.L.R.B. 621; *National Labor Relations Board v. Bradford Dyeing Ass'n.*, 310 U.S. 318. rev'g *Matter of Bradford Dyeing Association (U.S.A.)* (a corporation) and *Textile Workers'*

We have found that the respondents discriminated in regard to the hire and tenure of employment of their employees on June 7, 1939. On the same date the Union voted a strike in protest against the lockout. On July 11, 1939, when Robinson attempted to reopen the camp to resume operations, he was prevented from so doing by the continued strike and the picket line. On that date reinstatement was offered the striking employees but was refused by them because of Robinson's refusal to bargain collectively with the Union.¹² When employees voluntarily go on strike even in protest against unfair labor practices, it has been our policy not to award them back pay during the period of the strike. In the instant case, however, the commencement of the strike on June 7, because of the lock-out of the employees, did not terminate the respondents' obligation to make payments of

Organizing Committee of the C.I.O., 4 N.L.R.B. 604, Windsor Manufacturing Co. v. National Labor Relations Board, 118 F (2d) 494 (C.C.A. 3) enf'g Matter of John J. Oughton, Bertram E. Oughton, and Robert B. Oughton, Individuals and Co-partners trading as the Windsor Manufacturing Company and Textile Workers' Organizing Committee (C.I.O.) 20 N.L.R.B. 310.

(12) As shown above, Robinson testified without contradiction, that when he was attempting to take the men through the picket line on July 11, 1939, he made an offer of reinstatement to all the striking employees through Johnson, the union organizer in charge of its strike activities, but that Johnson refused such offer on behalf of the employees by stating that the men would not return to work until Robinson recognized the Union.

back pay to the locked out employees since on that date the lock-out was in existence and the strike had no effect on the situation. The strike became effective only when the respondents attempted to reopen the camp to resume operations on July 11, 1939, indicated that jobs were available for the employees, but the respondents were prevented from so doing because of the Union picket line. We will, therefore, order the respondents to make whole the employees listed in Appendices A and B for any loss of pay they may have suffered by reason of the lockout by payment to each of them of a sum of money equal to the amount he would normally have earned as wages from June 7, 1939, to July 11, 1939,¹³ less his net earnings ¹⁴ during said period.

(13) It appears that Robert Monett, listed in Appendix A, and Victor Norman, listed in Appendix B, worked until June 9 and are, therefore, entitled to back pay only from that date. It also appears that Clyde Smith, listed in Appendix A, was offered reemployment on July 5, which he refused, and is therefore, entitled to back pay only up to that date. The record also discloses that the following named employees, all listed in Appendix B, were reemployed prior to July 11 and, for this reason, are entitled to back pay only up to the respective dates of their reemployment: Victor Norman, reemployed on July 3; Ralph Peterson, reemployed on July 10; C. C. Sperber, reemployed on July 10; Mrs. Marie Sperber, reemployed on July 10.

(14) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the unlawful discrimination against him and the consequent necessity of his seeking employment

The employees whom we have found to have been locked out on June 7, 1939, are also entitled to reinstatement upon application.¹⁵ Since it appears, however, that the employees listed in Appendix B have all been reinstated, we will not order their reinstatement. We shall order the respondents to offer to the employees listed in Appendix A reinstatement to their former or substantially equivalent positions. Such reinstatement shall be without prejudice to their seniority and other rights and privileges and shall be effected in the following manner: All persons now employed by the respondents at the Caribou Basin camp who were not employees of the respondents on June 6, 1939, shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, thereupon, by reason of a reduction in force, there is not

elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. National Labor Relations Board*, 311 U.S. 7.

(15) The refusal of the respondents' offer of employment on July 11, 1939, while engaging in the strike occasioned by the respondents' unfair labor practices in refusing to bargain with the Union, did not impair the right of the striking employees to subsequent reinstatement. *Matter of Western Felt Works and Textile Workers Organizing Committee. Western Felt Local, 10 N.L.R.B. 407*; *Matter of Stewart Die Casting Corporation and United Automobile Workers of America, Local 298*, 14 N.L.R.B. 872, *enf'd as mod.* *Stewart Die Casting Corporation v. National Labor Relations Board* 114 F.(2d), 849 (C.C.A. 7), *cert. den.* 61 S. Ct. 449.

sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondents' usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as was applied in the conduct of the respondent's business prior to June 7, 1939. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed on a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work. Each of the employees thus ordered reinstated, or placed on a preferential list, shall also be entitled to back pay beginning 5 days after his application for reinstatement pursuant to our order, in the event that the respondents do not reinstate him or place him on a preferential list in accordance therewith within such 5 days. Such back pay, if it becomes due, shall be computed in the manner described hereinbefore.

Upon the basis of the foregoing findings of fact and upon the entire record, the Board makes the following:

CONCLUSIONS OF LAW

1. International Woodworkers of America, Local Union No. 119, also known as Local No. 239, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. Long Lake Lumber Company and F. D. Robinson are employers of the employees at the Caribou Basin, Sand Point, Idaho, logging camp, within the meaning of Section 2 (2) of the Act.

3. The employees of the respondents at the Caribou Basin logging camp, excluding supervisory officials, foremen, and clerical and office employees, at all times material herein, constituted, and they now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. International Woodworkers of America, Local Union No. 119, also known as Local No. 239, affiliated with the Congress of Industrial Organizations, was on June 6, 1939, and at all times thereafter has been the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing on June 7, 1939, and at all times thereafter to bargain collectively with the International Woodworkers of America, Local Union No. 119, also known as Local No. 239, affiliated with the Congress of Industrial Organizations, as the exclusive representative of the employees in the appropriate unit, the respondents have engaged in and are

engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. By discriminating in regard to the hire and tenure of employment of the employees listed in Appendices A and B, thereby discouraging membership in International Woodworkers of America, Local Union No. 119, also known as Local No. 239, affiliated with the Congress of Industrial Organizations, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

7. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

9. The respondents have not discriminated within the meaning of Section 8 (3) of the Act with regard to the hire or tenure of employment of Albert Faurot and Al Hendrickson; nor in the discharges of Cecil Chaney, Fred Chaney, A. J. Burford, and Charles Brodine on or about August 17, 1939; nor in the discharges of O. W. Haney or A. J. Waffle on or about August 21, 1939.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c)

of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Long Lake Lumber Company and F. D. Robinson, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Woodworkers of America, Local No. 239, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees at the Caribou Basin, Sand Point, Idaho, logging camp, excluding supervisory officials, foremen, and clerical and office employees;

(b) Discouraging membership in International Woodworkers of America, Local No. 239, affiliated with the Congress of Industrial Organizations, or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any terms or conditions of employment because of their membership in or activity in behalf of any such labor organization;

(c) In any other manner interfering with, restraining or coercing their employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Woodworkers of America, Local No. 239, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees at the Caribou Basin, Sand Point, Idaho, logging camp, excluding supervisory officials, foremen, and clerical and office employees;

(b) Offer to the employees listed in Appendix A immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "The remedy" above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section; and make whole said employees for any loss of pay they may suffer by reason of any refusal of reinstatement or placement upon the preferential list, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from five (5) days after the date of this Order to the date of the offer of reinstatement or placement upon the preferential list, less his net earnings¹⁶ during said period;

(c) Make whole the employees listed in Appendices A and B for any loss of pay they may

(16) See footnote 14, *supra*.

have suffered by reason of the discrimination against them by payment to each of them of a sum of money equal to the amount he would normally have earned as wages from June 7, 1939, to July 11, 1939, except that back pay shall be limited in the case of Victor Norman to the period from June 9 until July 3; in the case of Robert Monett to the period from June 9 until July 11; in the case of Clyde Smith from June 7 until July 5; and in the cases of Ralph Peterson, C. C. Sperber, and Mrs. Marie Sperber from June 7 until July 10, less his net earnings¹⁷ during such period;

(d) Post immediately in conspicuous places in their Caribou Basin, Sand Point, Idaho, logging camp, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to their employees stating (1) that the respondents will not engage in the conduct from which they are ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that they will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that the employees are free to become or remain members of International Woodworkers of America, Local No. 239, affiliated with the Congress of Industrial Organizations, and that the respondents will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Nine-

(17) See footnote 14, *supra*.

teenth Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

And It Is Further Ordered that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondents discriminated within the meaning of Section 8 (3) of the Act in regard to the hire or tenure of employment of Albert Faurot and Al Hendrickson, or by discharging Cecil Chaney, Fred Chaney, A. J. Burford, and Charles Brodine, on or about August 17, 1939, or by discharging O. W. Haney and A. J. (Jack) Waffle, on or about August 21, 1939.

Signed at Washington, D. C., this 22 day of August, 1941.

[Seal]

HARRY A. MILLIS,
Chairman.

EDWIN S. SMITH,
Member.

WM. M. LEISERSON,
Member.

National Labor Relations Board.

(17) See footnote 14, supra.

APPENDIX A

Robert Barwise
Ernest Berger
B. J. Durick
A. W. Evans
Arthur Feoco
Dale Greer
Martin Hansen
Ura Kirtley
Charles Lisle
Robert Monett¹⁸
Grant Robinson
Granville Robinson
Boyd Stevens
Ray Stevens
Clyde Smith¹⁹
Leon M. Wise

APPENDIX B

Charles Berry
Charles Brodine
A. J. Burford
Arlie Chaney
Cecil Chaney
Fred Chaney
Charles C. Dingley
Joe Dobrovec
Ted Early
Ralph A. Feoco

(18) See footnote 13, *supra*.

(19) See footnote 13, *supra*.

J. L. Finley
Harry Gunsalus
O. W. Haney
Stanley Harder
William Henry
Emery E. Hunt
Clifford Joseph
Joel Joseph
Burnell N. Lang
Neil Mardis
John J. McCarr
Dwight Miller
Sidney Moody
Greg Moore
Frank Mor
Earl Murphy
Frank Murphy
Victor Norman ²⁰
Hjalmar Olson
Curtis Peterson
Ralph Peterson²¹
Cecil Porter
Cecil Runyon²²
C. C. Sherber²³
H. A. Sperber
Mrs. Marie Sperber²⁴

(20) See footnote 13, *supra*.

(21) See footnote 13, *supra*.

(22) Incorrectly spelled Ruyon in the complaint.

(23) See footnote 13, *supra*.

(24) Wife of C. C. Sperber, camp cook, who was

Charles Stevenson
Andrew Swenson
C. E. Twist
Jack Waffle²⁵
Nathan Way
Fred Williams
Robert Yeazel

[Title of Board and Cause.]

SEPARATE ANSWER OF RESPONDENT
LONG LAKE LUMBER COMPANY

For its Separate Answer to the complaint herein, respondent Long Lake Lumber Company admits, denies and alleges as follows:

I.

This respondent admits the allegations of Paragraph I of the complaint.

II.

This respondent admits the allegations of Paragraph II of the complaint.

reemployed on July 10, 1939. Mrs. Sperber was the second cook. The respondent Robinson's verified answer states that she returned to work on July 10 1939, and therefore, though the record is silent as to her, it is found that she was reemployed on that date, and as stated in footnote 13, *supra*, is entitled to back pay only up to that date.

(25) Also referred to as A. J. Waffle.

III.

Answering Paragraph III of the complaint, this respondent admits that F. D. Robinson, called respondent Robinson in the complaint, conducts a logging enterprise situated in Caribou Basin near Sandpoint, County of Bonner, State of Idaho, where standing timber being purchased by this respondent, Long Lake Lumber Company, is felled, bucked, yarded and loaded, but denies that said standing timber is owned by this respondent.

This respondent denies that at all times mentioned in the complaint, or at any time mentioned in the complaint, or at any other time or at all, said respondent Robinson has conducted or does now conduct said logging operations for the sole benefit of, or as the agent for or alter ego of this respondent, Long Lake Lumber Company.

This respondent denies that respondent Long Lake Lumber Company did, at all times mentioned in the complaint, or at any time mentioned in the complaint, or at any other time or at all, or does now, direct and control, or direct or control, the said operations of the said respondent Robinson.

This respondent denies that the respondent Long Lake Lumber Company furnishes funds and equipment to said respondent Robinson which are necessary for the conduct of said logging operations situated as aforesaid, by means of loans or sales or leases of equipment, or otherwise, or in any other manner or at all, except by making advances to be repaid out of the contract price of the logs as hereinafter alleged.

This respondent denies that for many years last past said respondent Robinson has been, or now is, financially supported by said respondent Long Lake Lumber Company, but admits that the said Robinson is now, and for several years last past has been, indebted to this respondent in connection with the conduct of his logging operations.

This respondent denies that said respondent Robinson utilizes equipment or machinery or tools or supplies owned and possessed, or owned or possessed, by said respondent Long Lake Lumber Company, in the conduct of its Caribou Basin logging camp, and denies that this respondent has any Caribou Basin logging camp, but admits that this respondent has assisted the said Robinson in the purchase of some machinery and equipment for use in his logging operations, has permitted the said Robinson to use one or two loading jammers under an arrangement for loading other logs as well as the logs produced by him, and that it owns the camp buildings located at the said Robinson's Caribou Basin logging camp and other improvements.

This respondent denies that said respondent Long Lake Lumber Company has purported to contract and agree with said respondent Robinson, whereby the said Robinson agreed to perform certain operations for the benefit of said respondent Long Lake Lumber Company, but admits and alleges that this respondent has entered into written contracts with the said Robinson from year to year during the past several years for the logging of certain timber purchased by this respondent from Humbird

Lumber Company, a corporation, situated in Bonner County, Idaho, tributary to the Caribou Basin, as an independent contractor, and that such contracts have been for the mutual benefit of this respondent and the said respondent Robinson.

IV.

Answering Paragraph IV of the complaint, this respondent denies that the respondents, in the course and conduct, or course or conduct, of said business at the Caribou Basin Logging camp, cause or have continuously caused logs to be transported by common carrier engaged in interstate commerce from said logging camp to respondent Long Lake Lumber Company's sawmills at Spokane, Washington, but admits and alleges that this respondent has caused logs produced by the respondent Robinson at his Caribou Basin logging camp and loaded on cars by him to be transported by common carrier engaged in interstate commerce from said logging camp to this respondent's sawmills at Spokane, Washington.

This respondent denies that said respondent Long Lake Lumber Company requires its logging superintendent, or various or other agents or executives, to frequent the Caribou Basin logging operation, or to determine how or when or what logging shall be done, or supervise the employment or the work of employees, or fix or guide the said respondent Robinson's labor or log selection policies. This respondent admits that it has caused certain of its officers and representatives to frequent the Caribou Basin

logging operation of respondent Robinson from time to time for the purpose of determining whether or not the said Robinson had complied with the obligations of this respondent to the Humbird Lumber Company in the logging of said timber as set forth and contained in the contract for the purchase of said timber hereinafter mentioned.

V.

Answering Paragraph V of the complaint, this respondent denies that the respondent Long Lake Lumber Company, in the course and conduct of its business, causes or has continuously caused substantially all of the products produced by it to be sold or shipped or transported in interstate commerce from its sawmill plants in Spokane, Washington, to or into or through states of the United States other than the State of Washington, but admits that a large part of the products produced by it have been sold, shipped and transported in interstate commerce.

VI.

This respondent is without knowledge with respect to the allegations contained in Paragraph VI of the complaint.

VII.

This respondent is without knowledge with respect to the allegations contained in Paragraph VII of the complaint.

VIII.

This respondent is without knowledge with respect to the allegations contained in Paragraph

VIII of the complaint, except that this respondent denies that it did refuse to bargain collectively with Local 119 as the representative of their employees in the aforesaid unit, with respect to hours, wages and other conditions of employment, or that said Local 119 ever demanded that this respondent bargain collectively with it as such representative, or otherwise. This respondent denies that the said bargaining was duly demanded by Local 119 as the exclusive representative of all the employees in the unit described, and denies that this respondent was an employer of any of the members of said Local 119, or of any of the employees of the said respondent Robinson, or that any of such members or employees were employed by this respondent at any time or at all.

IX.

Answering Paragraph IX of the complaint, this respondent denies that by their refusal to bargain collectively with said Union as alleged in Paragraph VIII of the complaint, or otherwise or at all, the respondents did engage in or have engaged in an unfair labor practice within the meaning of Section 8, subdivision (5) of said Act, or otherwise or at all. This respondent denies that it did refuse to bargain collectively with said Union as alleged in Paragraph VIII, or at all, or that it was ever asked to bargain collectively with said Union, since it was not an employer of any of the members of said Union.

X.

This respondent denies that on or about June 7, 1939, or at any other time or at all, respondents discharged from their employ at the Caribou Basin logging camp those employees whose names are listed in the schedule attached to the complaint, marked Exhibit "A" and made a part thereof; or that thereafter, on or about July 14, 1939, and thereafter, or at any other time or at all, hired or authorized the hiring of employees other than the employees named in Exhibit "A", for the conduct of operations at their Caribou Basin logging camp. This respondent denies that it discharged from its employ any of the persons or individuals whose names are listed in the schedule attached to the complaint, marked Exhibit "A", denies that it was at said time, or at any time, the employer of such persons or individuals, or any of them, and denies that such persons or individuals, or any of them, were at that time or at any time employees of this respondent. This respondent alleges that if any of the individuals whose names are listed in said Exhibit "A" were employed at the Caribou Basin logging camp on or about June 7, 1939, or at any other time, they were the employees of the respondent Robinson, and not the employees of this respondent, and that this respondent had no control whatever over their length or tenure of employment.

This respondent denies that the discharge of said employees or the hiring or the authorization to hire new employees at the Caribou Basin logging camp was or is in furtherance of a design to avoid col-

lective bargaining or to discourage membership in the Union, and denies that the respondents discharged and locked out the employees named in Exhibit "A" for the reason that said employees had joined and assisted Local 119, or had joined or had assisted said Local. This respondent denies that it did discharge said alleged employees, or any of them, or that it did hire or authorize the hiring of any new employees.

XI.

Answering Paragraph XI of the complaint, this respondent denies that on or about August 17, 1939, or at any other time or at all, the respondents did discharge Cecil Chaney or Fred Cheney or A. J. Burford or Charles Brodine, or that they did on or about August 21, 1939, or at any other time or at all, discharge O. W. Haney or A. J. Waffle, or at all times since said dates, or at any other time or at all, refused to reinstate the above named individuals and each of them or any of them, for the reason that the above named individuals and each of them or any of them joined and assisted Local 119. This respondent denies that it discharged any of said individuals or that any of said individuals were at any time employed by it.

XII.

Answering Paragraph XII of the complaint, this respondent denies that by the acts and course of conduct set forth in Paragraphs X and XI of the complaint, or by any acts or any course of conduct, or anything else, the respondents, or either of them,

have discriminated or are discriminating with regard to hire and tenure of employment of said employees named in said Paragraphs, or have discouraged or are discouraging membership in said Local 119, or did thereby engage in or are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3), of said Act.

XIII.

Answering Paragraph XIII of the complaint, this respondent denies that since on or about June 6, 1939, or at any other time or at all, the respondents, by their officers or employees or agents, or in any other way or at all, have, by various acts and statements, or any acts or statements, interfered with or restrained or coerced their employees in the exercise of their right to self-organization, or to form or join or assist a labor organization, or to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection, or that respondents have, among other things, questioned their employees as to their Union membership or advised their employees that their Caribou Basin logging camp would discontinue operations if said employees continued their membership in Local 119, or advised their employees that their Caribou Basin logging *opera-* would not operate so long as Local 119 requested the execution of a written agreement, or attacked in a derogatory manner the leadership of Local 119 and its affiliated organizations. This re-

spondent denies that it now has, or has ever had, any employees at the Caribou Basin logging camp, or that any of the individuals employed in connection with the Caribou Basin logging operations are its employees, and alleges that any individuals employed in connection with said Caribou Basin logging operations now are, and at all times mentioned in the complaint have been, the employees of respondent Robinson, and that said logging operation has been conducted by said Robinson as an independent contractor.

XIV.

Answering Paragraph XIV of the complaint, this respondent denies that by the refusal of the respondents to bargain collectively with Local 119, as alleged in Paragraph VIII of the complaint, or by the shut-down of their Caribou Basin logging camp, or by the lock-out and discharge of their employees described in Paragraph X of the complaint, or by the discharges of the individuals as alleged in Paragraph XI of the complaint, or by the acts and statements, or any act or statement alleged in Paragraph XIII of the complaint, or by various other acts and statements or any act or statement, or anything else, or at all, the respondents did interfere with or restrain or coerce their employees in the exercise of the rights guaranteed to them in Section 7 of said Act, or did thereby engage in, or are thereby engaging in, unfair labor practices within the meaning of Section 8, subdivision (1) of said Act, or otherwise or at all. This

respondent denies that it did any of the things alleged in said Paragraph XIV or referred to therein, and expressly denies that any of the individuals referred to therein were its employees.

XV.

Answering Paragraph XV of the complaint, this respondent denies that the activities of the respondents as set forth in Paragraphs VIII, X, XI, XIII and XIV of the complaint, occurring in connection with the operations of the respondents as described in Paragraphs I, II, IV and V of the complaint, have a close or intimate or substantial relation to trade or traffic or commerce among the several states of the United States or foreign countries, or have led or tend to lead to labor disputes burdening or obstructing interstate or foreign commerce, or the free flow of interstate or foreign commerce. This respondent denies that any of the activities referred to in said Paragraph XV were the activities of this respondent.

XVI.

Answering Paragraph XVI of the complaint, this respondent denies that the aforesaid acts of the respondents Long Lake Lumber Company and F. D. Robinson described in Paragraphs VIII, X, XI and XIII of the complaint constitute unfair labor practices within the meaning of Section 8, subdivisions (1), (3) and (5), and Section 2, subdivisions (6) and (7) of said Act, or any of them, or constitute any unfair labor practices. This respondent

ent denies that any of the acts referred to in said Paragraph XVI were the acts of this respondent.

For a further defense to the complaint herein, this respondent alleges:

I.

That the National Labor Relations Board is without jurisdiction to entertain or act upon the charge filed herein by the International Woodworkers of America Local No. 119, affiliated with the Congress of Industrial Organizations, or to issue a complaint thereon against this respondent, for the reason that this respondent is not, and at none of the times mentioned in the complaint was, an employer of any of the individuals mentioned or referred to in the complaint or in said charge, and that at all the times therein mentioned the said individuals were the employees of respondent F. D. Robinson, an independent contractor.

II.

That at all the times mentioned in the complaint this respondent was the buyer of the timber in Bonner County, Idaho, tributary to the Caribou Basin, which was being logged by the said respondent Robinson as an independent contractor, under a contract of purchase in writing with the Humbird Lumber Company, a corporation, made and entered into under date of June 28, 1935, by the terms of which this respondent was required to cut and remove said timber in strict conformity with all the provisions contained in said contract covering the logging of said timber.

III.

That on June 6, 1939, and at all the times mentioned in the complaint, the respondent F. D. Robinson was conducting the logging operations at the Caribou Basin logging camp mentioned in the complaint, for the cutting and removing of a portion of said timber so purchased by this respondent from the Humbird Lumber Company, under a contract in writing bearing date of January 26, 1939, in which, among other things, it was agreed between this respondent and respondent Robinson that all work must be done to conform with the contract between this respondent and the Humbird Lumber Company for the purchase of said timber, and that the Respondent Robinson should receive, for logging said timber and loading the logs on cars, a certain price per thousand feet, as therein specified.

IV.

That the said respondent Robinson was customarily engaged in the independently established business of a logging contractor prior to contracting with this respondent for the logging of said timber; that he owned his own logging outfit and equipment, in which he had invested large sums of money and which was of the reasonable value of \$50,000.00 in the year 1939; that he used such equipment in conducting his logging operations at the Caribou Basin logging camp in 1939, and at various times contracted with persons other than this respondent for the performance of various kinds of work. While engaged in conducting his logging

operations at the Caribou Basin logging camp, being the operations referred to in the complaint, the said respondent Robinson hired and fired his own employees, fixed the amount of their salaries and wages, and exercised complete control of the performance of the work.

V.

That this respondent did not have or retain the right to control or direct the manner in which the said respondent Robinson should log said timber or conduct his logging operations; that this respondent, at no time, exercised or attempted to exercise any direction or control over the manner in which the respondent Robinson should conduct his logging operations, or the means to be employed by him in logging said timber or the employment of workmen to perform labor in connection with such logging operations.

VI.

That the business relationship of said respondent Robinson to this respondent at all such times was that of an independent contractor, and the said Robinson was not an agent or servant of this respondent, and was not subject to the direction or control of this respondent as to the manner or means by which he performed his work in the conduct of his logging operations, and at none of such times did this respondent have the right to control or direct the manner in which the respondent Robinson should perform his work in logging said timber,

or the means or methods which he should use in connection therewith.

VII.

That during the course of such logging operations it was necessary for this respondent to have its officers and representatives keep in touch with the progress of the logging operations of the said Robinson in order to determine whether or not he was logging said timber in strict conformity with the provisions of said contract of purchase from the Humbird Lumber Company, and to require him to comply with the obligations of this respondent to the Humbird Lumber Company under the terms and provisions of said contract of purchase. This respondent did not, at any time, have any control over the actions of said respondent Robinson in the employment of his agents and servants, and did not have or attempt to exercise any authority with respect to the individuals to be employed by him, the compensation which they should receive for their services, or the length or tenure of their employment. This respondent did not have, and did not attempt to exercise, the right to discharge any of the employees of the said Robinson on the job. This respondent made advances to the said Robinson from time to time, as required to meet his payrolls and other expenses, to be repaid out of the contract price of logs delivered.

Wherefore, this respondent prays that the complaint herein be dismissed.

LONG LAKE LUMBER
COMPANY,

By J. M. BROWN,
President.

Respondent.

Post Office Address:

Spokane, Washington.

C. H. POTTS

Attorney for Respondent Long
Lake Lumber Company
Residence and Post Office Address: Coeur d'Alene, Idaho.

State of Idaho

County of Kootenai—ss.

J. M. Brown, being first duly sworn, on oath deposes and says: That he is an officer, to-wit, President, of the Long Lake Lumber Company, a corporation, and makes this verification for and on behalf of said respondent and is duly authorized so to do; that he has read the within and foregoing Separate Answer of Respondent Long Lake Lumber Company, and knows the contents thereof; and that he believes the facts therein stated to be true.

J. M. BROWN

Subscribed and sworn to before me this 28th day of February, A. D. 1940.

[Seal] C. H. POTTS

Notary Public in and for the State of Idaho, residing at Coeur d'Alene, Idaho.

[Title of Board and Cause.]

SEPARATE ANSWER OF F. D. ROBINSON

Comes now the respondent, F. D. Robinson, and in answer to the Complaint filed herein by the International Woodworkers of America Local Union No. 119, affiliated with the Congress of Industrial Organizations, admits, denies and alleges as follows, to-wit:

I.

This respondent is an independent contractor engaged in general logging operations in the Caribou Basin, Bonner County, Idaho; that the logs manufactured by respondent are loaded on cars either at Samuels, Idaho or Colburn, Idaho for the Long Lake Lumber Company, this respondent being paid for said logs by the Long Lake Lumber Company at certain rates per thousand board feet therefor. This respondent having no knowledge concerning the allegations of Paragraph I of the Complaint, therefore denies the same.

II.

Admits that the respondent Long Lake Lumber Company now owns and operates two sawmills located in the City of Spokane, State of Washington.

III.

Admits that this respondent conducts a logging enterprise at the Caribou Basin near Sandpoint, Bonner County, Idaho, but denies that said standing

timber is owned by the respondent Long Lake Lumber Company.

Denies that this respondent has conducted and now conducts said logging operations for the sole benefit of and as the agent for and the alter ego of the Long Lake Lumber Company, and alleges the fact to be that this respondent is an independent contractor engaged in logging operations for his sole benefit.

Denies that the Long Lake Lumber Company directs or controls the operations of this respondent.

Denies that the respondent, Long Lake Lumber Company, furnished any equipment whatsoever to this respondent; denies that the respondent, Long Lake Lumber Company, leases any equipment to this respondent; admits that the respondent, Long Lake Lumber Company, advances funds to this respondent in the conduct of said logging operations.

Denies that this respondent is supported financially by the Long Lake Lumber Company but admits that he has been and now is indebted financially to the Long Lake Lumber Company.

Denies that this respondent utilizes equipment, machinery, tools and supplies or any of said items which are owned or possessed by the respondent, Long Lake Lumber Company, in the conduct of this respondent's logging operations at his Caribou Basin logging camp.

Admits that this respondent has a contract with the Long Lake Lumber Company for the manufacture of certain timber products.

IV.

Denies that this respondent has caused logs to be transported by common carrier engaged in interstate commerce from said logging camp to the mills of Long Lake Lumber Company at Spokane, Washington, and alleges the fact to be that this respondent's contract with the Long Lake Lumber Company provides for the delivery of logs F.O.B. cars only; that this respondent has nothing whatsoever to do with the shipment of said logs; denies that the Long Lake Lumber Company requires its Superintendent and various other agents and executives or any other persons whatsoever to frequent the Caribou Basin logging operations of respondent and determine how, or when, or what logging shall be done; denies that the Long Lake Lumber Company supervise the employment and the work of employees or that said Long Lake Lumber Company fixes or guides this respondent's labor and log selection policies.

V.

This respondent has no information upon which to answer Paragraph V of the Complaint, and therefore denies the same.

VI.

This respondent has no information upon which to answer Paragraph VI of the Complaint, and therefore denies the same.

VII.

This respondent has no information upon which to answer Paragraph VII of the Complaint, and therefore denies the same.

VIII.

Denies each and every allegation contained in Paragraph VIII of the Complaint.

IX.

Denies each and every allegation contained in Paragraph IX of the Complaint.

X.

This respondent denies that on or about June 7, 1939 he discharged from their employment those employees whose names are listed in the schedule attached to the Complaint and marked Exhibit "A."

Admits that on or about July 14, 1939 and at other times thereafter, he hired or authorized the employment of other employees than those named in Exhibit "A".

Denies that the discharge of said employees and the hiring or the authorization to hire new employees at the Caribou Basin logging camp was or is in furtherance of a design to avoid collective bargaining and to discourage membership in any Union; denies that the respondent locked out any employees whether listed in Exhibit "A" or otherwise.

XI.

This respondent denies each and every allegation contained in Paragraph XI of the Complaint.

XII.

This respondent denies each and every allegation contained in Paragraph XII of the Complaint.

XIII.

Denies that on or about June 6, 1939 or at any other time or at all this respondent, his employees or agents have ever interfered with, restrained or coerced the employees in their right to self organization or to form, join, or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or for their mutual aid or protection; denies that the respondent, his agents or employees have questioned the employees as to their Union membership, but admits that the matter of Union membership was general topic of conversation with all of the employees of the respondent; denies that the employees of respondent were ever informed that the camp would discontinue operations if said employees continued their membership in any labor organization; denies that respondent advised his employees that the Caribou Basin logging operations would not operate so long as Local 119 requested the execution of a written agreement; denies that the respondent, his agents or employees attacked in a derogatory manner the leadership of Local 119 and its affiliated organizations.

XIV.

This respondent denies each and every allegation contained in Paragraph XIV of the Complaint.

XV.

This respondent denies each and every allegation contained in Paragraph XV of the Complaint.

XVI.

This answering respondent denies each and every allegation contained in Paragraph XVI of the Complaint, but admits that if the allegations contained in the various paragraphs referred to in Paragraph XVI were true, then in that event, such acts would constitute unfair labor practices within the meaning of the Act.

Further answering the Complaint on file herein, this answering respondent alleges as follows, to-wit:

I.

This respondent is engaged in general logging operations in what is known as the Caribou Basin, Bonner County, Idaho.

II.

That early in the Spring of 1939, this respondent commencing logging operations in the Caribou Basin. At the beginning of the operations only a few men were employed and they were employed for the purpose of getting camp, machinery and equipment in order so that as soon as weather conditions would permit, logging operations on a regular scale might begin; that weather conditions in the Spring of 1939 were very unfavorable to logging operations owing to the fact that it rained nearly every day; that on or about the 6th day of June, 1939, owing to heavy rains which made it impossible to operate trucks in the woods, or to successfully continue logging operations, the camp was shut down; that all of the employees of respondent at

that time, with the exception of cooks, watchmen, mechanics and a few other men were released until such time as weather conditions were such that logging operations could be resumed; that most of the employees listed in Exhibit A attached to the Complaint were released at that time for the reasons stated heretofore; that in addition to those employees listed in Exhibit A of the Complaint, large number of other employees were also released for the same reason; that as soon as weather conditions were such that logging operations could be resumed, this respondent did resume logging operations at the Caribou Basin, Bonner County, Idaho, and re-employed all of his former employees who were available at that time; that nearly all of the employees listed in Exhibit A were rehired in addition to the majority of the other employees whose names are not listed in Exhibit A; that this respondent and his employees in charge of the hiring of men made a diligent effort to contact all of the former employees who were laid off on the 6th of June and all of said employees who desired to return to work and who were still in the vicinity of Bonner County, Idaho were offered re-employment by this respondent.

III.

That during the logging season of 1939, there was never any dispute between this respondent and his employees relative to wages, hours, or working conditions, save and except the following: that when the camp was first opened in the Spring of 1939, this respondent had not yet connected up the shower

baths and hot water and neither had he been able to secure sufficient lights for the camp buildings; that these items were quickly corrected and thereafter no complaint was ever made by the employees of respondent relative to working conditions, hours or wages.

IV.

That at no time has this respondent refused to negotiate with or to bargain collectively with any Union through representatives or committees of their own choosing; that during the Spring and Summer of 1939, this respondent repeatedly requested the representatives of the Local Union No. 119 of the International Woodworkers of America to present their credentials showing that a majority of the employees of respondent had affiliated with or had designated this Union as their bargaining agency; that at no time did the officials of said Union or any other Union ever present to this respondent any such credentials; that in order to settle the controversy between this respondent and the so-called Union, this respondent did on many occasions suggest that an election be held under the auspices of the National Labor Relations Board for the purpose of determining whether or not this Union represented a majority of the employees of this respondent; that on one occasion the representatives of the Union agreed to hold such an election but within thirty minutes after making such an agreement these same representatives repudiated this agreement and refused to hold such an election; that this respondent has always been willing to hold

such an election and to be bound by the results thereof.

V.

This respondent denies that he has ever locked out any employees during the year 1939 or at any other time.

Specifically answering the allegations of the Complaint relative to the discharge of and the locking out of those employees listed in Exhibit A attached to the Complaint, this respondent herewith sets forth the record of employment of all of the employees mentioned in Exhibit A, to-wit:

Re: Charles Brodine, teamster, returned to work July 22, 1939, laid off August 17, 1939. Cause: completion of his job.

Re: A. J. Burford, swamper, returned to work July 20, 1939, laid off August 17, 1939, completion of job.

Re: Charles C. Dingley. Returned to work September 12, 1939, laid off December 8th account camp closed.

Re: A. W. Evans. Could not be located, reported working for Diamond Match Co.

Re: Ted Early. Returned to work July 19, 1939, quit August 12th and went to work for Walter Brown.

Re: Ralph A. Feoco. Returned to work September 26th, discharged October 23rd, sawyer, work completed.

Re: Arthur Feoco. Could not be found, reported to be working for Great Northern Railway. This

employee came back to the camp late in the Fall, asked for work but there was no work available.

Re: J. L. Finley. Returned to work July 19th, injured September 21st fractured foot, still disabled and walking with aid of a cane at the date of drafting this answer.

Re: Dale Greer. Could not be located, reported to be in Oregon.

Re: O. W. Haney. Returned to work July 20th, quit August 19th. Returned to work August 29th and worked until job completed on November 20th.

Re: Martin Hansen. Could not be located.

Re: Stanley Harder. Returned to work July 26th, discharged October 20th. This employee was a sawyer, he repeatedly cut timber beyond designated lines and after being warned several times, was finally discharged.

Re: Emery E. Hunt. Returned to work July 24th, discharged November 4th account completion of job.

Re: Clifford Joseph. Returned to work July 24th, discharged November 6th account completion of job.

Re: Joel Joseph. Returned to work July 24th, quit July 26th.

Re: Ura Kirtley. Could not be located, reported to be at Murray, Idaho.

Re: Charles Lisle. Could not be located, supposed to be at Lewiston, Idaho.

Re: Burnell N. Lang. Returned to work July 22nd, quit August 5th and went to work for Walter Brown.

Re: John J. McCarr. Returned to work July 24th, quit of his own accord October 18th.

Re: Dwight Miller. Returned to work July 14th, laid off November 29th when camp closed.

Re: Robert Monett. Could not be located, supposedly employed by U. S. Government on blister rust control project.

Re: Frank Mor. Returned to work July 25th, injured October 12th—still on crutches.

Re: Neil Mardis. Returned to work July 24th, laid off September 18th. This man was a sawyer but had no partner, hence no employment. After returning home, this man was engaged in making cordwood which cordwood was purchased by this respondent.

Re: Greg Moore. Returned to work July 19th, quit August 12th and went to work for Walter Brown.

Re: Mjalmar Olson: Returned to work July 25th, quit October 18th.

Re: Curtis Peterson. Returned to work July 22nd, quit August 21st and went to work for Walter Brown.

Re: Ralph Peterson. Returned to work July 10th and worked until November 20th when camp closed.

Re: Granville Robinson. Could not be located—came back to camp in the Fall but no work available.

Re: Andrew Swenson. Returned to work July 15th, worked until camp closed Nov. 29th. Worked one day December 30th at landing near Colburn, Idaho.

Re: Boyd Stevens. Could not be located, reported to be working at Diamond Match Co.

Re: Clyde Smith. Was personally contacted, offered work but offer was declined.

Re: Ray Stevens. Could not be located.

Re: Charles Stevenson. Could be located and returned to work July 24th and quite July 26th, sawyer.

Re: Nathan Way. Returned to work July 17th, discharged October 26th account of no further work to do. This man was employed as a blacksmith.

Re: Jack Waffle. Returned to work July 20th and worked until August 19th. Returned to work again September 12th, quit on October 4th.

Re: Leon Wise. Did not come back. This man was truck driver but had no truck. Was offered work as truck driver at any time that he had a truck to use.

Re: Grant Robinson. Did not come back, reported to be in Murray, Idaho.

Re: Fred Williams. Returned to work August 1st, laid off November 29th when camp closed.

Re: Robert Yeasel. Returned to work July 27th, quit September 23rd.

Re: Robert Barwise. Could not be located, reported to be in Spokane, Wash.

Re: Charles Berry. Returned to work July 17th, quit August 11th and went to work for Walter Brown.

Re: Ernest Berger. Could not be located, supposed to be in Spokane, Wash.

Re: Arlie Chaney. Returned to work July 22nd, employed until November 29th when camp closed.

Re: Cecil Chaney. Returned to work July 21st, discharged August 14th by order of Fire Warden, Pend Oreille Timber Protective Association. This man insisted upon smoking in the woods contrary to Forest Service and Protective Association orders. After being warned to refrain from smoking in the woods on two different occasions, Mr. Chaney persisted in smoking and was discharged as a result thereof. After the fire season closed and smoking was permissable in the woods, this man was employed six days during the month of September, 16 days during the month of October and 13 days during the month of November.

Re: Fred Chaney. Returned to work July 21st. On July 25th this employee injured his left leg and never returned to the camp.

Re: Joe Dobrovec. Could not be located, reported to be employed at Noxon, Mon.

Re: B. J. Durick. Could not be located, reported to be at Kellogg, Idaho.

Re: Albert Fauret. This man was hired as a flunky for a period of two weeks only. In accordance with the provisions of his employment, he was laid off June 5th one day prior to the closing of the camp.

Re: Harry Gunsalus. Returned to work July 21st, quit August 15th. This man was a partner of Cecil Chaney heretofore referred to and lost his job when Cecil Chaney was discharged. In other

words, he had no partner and being a sawyer he could not saw alone.

Re: Al Henrickson. This man was employed as a camp watchman and worked continuously from January 1, 1939 to December 7, 1939. This man has been an employee of respondent for the past four years and has worked steadily during that time for this respondent.

Re: William Henry. Returned to work July 10th and worked continuously until November 29th when camp closed.

Re: Sidney Moody. Did not come back. This man became sick and was unable to make payments on his truck and the truck was repossessed. In order to be of assistance to this employee, this respondent employed the wife of Sidney Moody in order that they might have employment in the family during the illness of Mr. Moody.

Re: Frank Murphy. Returned to work July 24th, discharged July 31st. This man was a sawyer supposedly but was unable to make wages at that type of work hence he was discharged.

Re: Earl Murphy. Returned to work July 24th, discharged July 31st. This man was a sawyer supposedly but was unable to make wages at that type of work hence he was discharged.

Re: Victor Norman. Returned to work July 3rd and worked continually until December 26th. He was then laid off for the reason that there was no further work to do. This man is now employed by respondent on the landing at Colburn, Idaho.

Re: Cecil Porter. Returned to work July 19th,

worked steadily until November 17th when his job was completed.

Re: H. A. Sperber. Returned to work September 5th and worked continuously until October 23rd.

Re: C. C. Sperber and Mrs. Marie Sperber are husband and wife. These employees were cook and second cook respectively. They returned to work July 10th and worked until September 19th when they were both discharged on account of dissention among the employees in the cook house.

Re: Cecil Runyon. Returned to work July 25th and worked continuously until camp close November 29th.

Re: C. E. Twist. Returned to work July 21st and worked continuously until November 29th when camp closed.

Wherefore, this answering respondent respectfully prays that the Complaint on file herein be dismissed.

EVERETT E. HUNT

Attorney for respondent, F.
D. Robinson. Office and
P. O. Address: Sandpoint,
Idaho.

State of Idaho,
County of Bonner—ss.

F. D. Robinson, being first duly sworn, deposes and on his oath says: That he is the answering respondent referred to in the above Answer and makes this affidavit as such; that he has read the above and foregoing Separate Answer of F. D.

Robinson, knows the contents thereof, and that the facts therein stated are true.

F. D. ROBINSON

Subscribed and sworn to before me this 27th day of February, 1940.

[Seal] EVERETT E. HUNT,

Notary Public in and for the State of Idaho, residing at Sandpoint therein.

My commission expires April 15, 1941.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10368

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LONG LAKE LUMBER COMPANY AND
F. D. ROBINSON,
Respondents.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.),

respectfully petitions this Court for the enforcement of its order against respondents, Long Lake Lumber Company and F. D. Robinson, their officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Long Lake Lumber Company and F. D. Robinson and International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations, Case No. C-1729."

In support of this petition, the Board respectfully shows:

(1) Respondent, Long Lake Lumber Company, is a Washington corporation, engaged in business in the State of Washington, and respondent, F. D. Robinson, is engaged in business in the State of Idaho, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, complaint and notice of hearing, respondent's answer and amended answer to complaint, hearing for the purpose of taking testimony and receiving other evidence, Intermediate Report, respondents' and Union's exceptions thereto, and order transferring case to the Board, motion to substitute Union Local Number, and order thereto, the Board, on August 22, 1941, duly stated

its findings of fact, conclusions of law and issued an order directed to the respondent, and its officers, agents, successors, and assigns, respondent F. D. Robinson, petition to modify Board's Order, and order denying aforesaid petition. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Long Lake Lumber Company and F. D. Robinson, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Woodworkers of America, Local No. 239, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees at the Caribou Basin, Sand Point, Idaho, logging camp, excluding supervisory officials, foremen, and clerical and office employees;

(b) Discouraging membership in International Woodworkers of America, Local 239, affiliated with the Congress of Industrial Organizations, or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees, or in any other manner discriminating in regard to their hire

or tenure of employment, or any terms or conditions of employment because of their membership in or activity in behalf of any such labor organizations;

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Woodworkers of America, Local 239, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees at the Caribou Basin, Sand Point, Idaho, logging camp, excluding supervisory officials, foremen, and clerical and office employees;

(b) Offer to the employees listed in Appendix A immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "The remedy" above, placing those employees for whom employment

is not immediately available upon a preferential list in the manner set forth in said section; and make whole said employees for any loss of pay they may suffer by reason of any refusal of reinstatement or placement upon the preferential list, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from five (5) days after the date of this Order to the date of the offer of reinstatement or placement upon the preferential list, less his net earnings¹⁴ during said period;

(c) Make whole the employees listed in Appendices A and B for any loss of pay they may have suffered by reason of the discrimination against them by payment to each of them of a sum of money equal to the amount he would normally have earned as wages from June 7, 1939, to July 11, 1939, except that back pay shall be limited in the case of Victor Norman to the period from June 9 until July 3; in the case of Robert Monett to the period from June 9 until July 11; in the case of Clyde Smith from June 7 until July 5; and in the cases of Ralph Peterson, C. C. Sperber, and Mrs. Marie Sperber from June 7 until July 10, less his net earnings¹⁴ during such period;

(14) See footnote 14 *infra*.

(14) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for

(d) Post immediately in conspicuous places in their Caribou Basin, Sand Point, Idaho, logging camp, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to their employees stating (1) that the respondents will not engage in the conduct from which they are ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that they will take the affirmative action set forth in paragraphs 2 (a), (b) and (c) of this Order; and (3) that the employees are free to become or remain members of International Woodworkers of America, Local No. 239, affiliated with the Congress of Industrial Organizations, and that the respondents will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

(3) On August 22, 1941, the Board's decision and order was served upon respondents by sending

the respondent, which would not have been incurred but for the unlawful discrimination against him and the consequent necessity of his seeking employment elsewhere * * * Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. * * *

a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. C. H. Potts and E. E. Hunt, respondents' attorneys in the State of Idaho.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript, and upon so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the board and requiring respondents, their officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 6th day of February 1943.

NATIONAL LABOR RELATIONS BOARD

/s/ ERNEST A. GROSS

Associate General Counsel

APPENDIX A

Robert Barwise	Charles Lisle
Ernest Berger	Robert Monett
B. J. Durick	Grant Robinson
A. W. Evans	Granville Robinson
Arthur Feoco	Boyd Stevens
Dale Greer	Ray Stevens
Martin Hansen	Clyde Smith
Ura Kirtley	Leon M. Wise

APPENDIX B

Charles Berry	Sidney Moody
Charles Brodine	Greg Moore
A. J. Burford	Frank Mor
Arle Chaney	Earl Murphy
Cecil Chaney	Frank Murphy
Fred Chaney	Victor Norman
Charles C. Dingley	Hjalmar Olson
Joe Dobrovec	Curtis Peterson
Ted Early	Ralph Peterson
Ralph A. Feoco	Cecil Porter
J. L. Finley	Cecil Runyon
Harry Gunsalus	C. C. Sperber
O. W. Haney	H. A. Sperber
Stanley Harder	Mrs. Marie Sperber
William Henry	Charles Stevenson
Emery E. Hunt	Andrew Swenson
Clifford Joseph	C. E. Twist
Joel Joseph	Jack Waffle
Burnell N. Lang	Nathan Way
Neil Mardis	Fred Williams
John J. McCarr	Robert Yeazel
Dwight Miller	

District of Columbia—ss.

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel for the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ ERNEST A. GROSS

Associate General Counsel

Subscribed and sworn to before me this 6th day of February 1943.

[Seal] /s/ JOSEPH W. KULKIS

Notary Public, District of
Columbia

My Commission expires April 15, 1947.

[Endorsed]: Filed Feb. 12, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

SEPARATE ANSWER OF RESPONDENT,
LONG LAKE LUMBER COMPANY, TO
PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United
States Circuit Court of Appeals for the Ninth
Circuit:

Long Lake Lumber Company, one of the respondents in the above entitled proceeding, for its separate answer to the petition for enforcement of an order of the National Labor Relations Board, filed in this Court, states:

(1) Admits that Respondent, Long Lake Lumber Company, is a Washington corporation, engaged in business in the State of Washington, within this judicial circuit, where the alleged unfair practices occurred.

(2) Admits that upon all proceedings had in said matter before the Board, the Board on August 22, 1941, stated its findings of fact, conclusions of law and issued the order directed to respondents set forth in paragraph (2) of the Petition for Enforcement of said Order.

(3) Admits that on August 22, 1941, the Board's decision and order was served upon this Respondent as alleged in paragraph (3) of the petition.

Further answering said Petition, and as cause why the Petition should not be granted and the

enforcement of said Order denied as to this Respondent, and why said Order should be set aside as to this Respondent, Respondent alleges:

(1) That the said Order of the National Labor Relations Board as set forth and contained in paragraph (2) of said Petition, in so far as it relates to this Respondent, is wholly invalid and improper under the Act, and is contrary to law, in that said Order is based on findings of fact which are not supported by substantial evidence.

(2) That the evidence is insufficient to support the following findings of fact made by the Board, to-wit:

(a) That "ultimate control over Robinson's logging operations was vested in Long Lake".

(b) That "Long Lake also controlled, to a large extent, Robinson's relations and dealings with said employees".

(c) That "since Long Lake controlled and directed Robinson's relations with his employees, Long Lake was and is an employer of the employees at Caribou Basin engaged in logging operations within the meaning of Section 2 (2) of the Act."

(d) That "Long Lake, by the actions of Robinson as directed and controlled by its officers—participated in the unfair labor practices heretofore found to have been committed by Robinson and thus discriminated in regard to the hire and tenure of employment of the employees listed—thereby discouraging membership in the Union,—and interfered with, restrained, and coerced said

employees in the exercise of the rights guaranteed in Section 7 of the Act.”

(3) That the evidence is insufficient to support the following conclusions of law made by the Board, to-wit:

(a) “Long Lake Lumber Company and F. D. Robinson are employers of the employees at the Caribou Basin, Sand Point, Idaho, logging camp, within the meaning of Section 2 (2) of the Act.”

(b) That this respondent has engaged in, or is engaging in, unfair labor practices, within the meaning of Section 8 (5) of the Act, or Section 8 (3) of the Act, or Section 8 (1) of the Act, or any provision of the Act.

(4) That the evidence is insufficient to support or justify any part of the Order of the Board directed to this Respondent.

(5) That the evidence is insufficient to support any finding or conclusion of the Board finding, holding or deciding that the Respondent, Long Lake Lumber Company, was an employer of the employees of Respondent, F. D. Robinson, at the Caribou Basin Logging Camp, within the meaning of Section 2 (2) of the Act, or at all; that this Respondent has engaged in, or is engaging in, unfair labor practices, or has in any way violated the provisions of the Act, and any such finding, conclusion or decision is contrary to law.

(6) That the order of the Board, ordering the Respondent, Long Lake Lumber Company, to cease and desist from the matters and things specified in said Order, and to take the affirmative action

therein set forth, is invalid and improper under the Act, and is contrary to law, in that this Respondent is not, and never has been, an employer of the said employees of the Respondent, F. D. Robinson, and is powerless to comply with said Order, or any part thereof.

Wherefore, this Respondent prays for a decree of this Court that said Petition for Enforcement of an Order of the National Labor Relations Board be dismissed, and that the Order of the Board set forth in said Petition be set aside and enforcement thereof denied as to this Respondent.

Dated at Coeur d'Alene, Idaho, this 20th day of February, A. D. 1943.

C. H. POTTS

Attorney for Respondent,
Long Lake Lumber Com-
pany.

Residence and P. O. Address:
Coeur d'Alene, Idaho.

State of Idaho

County of Kootenai—ss.

C. H. Potts, being first duly sworn, on oath deposes and says: That he is the attorney for Long Lake Lumber Company, one of the respondents in the above entitled proceeding; that he is authorized to and does make this verification for and on behalf of said respondent; that he has read the foregoing answer and has knowledge of the contents thereof, and that the statements made therein

are true to the best of his knowledge, information and belief.

C. H. POTTS

Subscribed and sworn to before me this 20th day of February, A. D. 1943.

[Seal]

WILLIAM B. McFARLAND,
Notary Public in and for the State of Idaho, residing at Coeur d'Alene, Idaho.

My Commission expires July 29, 1946.

AFFIDAVIT OF MAILING

State of Idaho

County of Kootenai—ss.

C. H. Potts, being first duly sworn, on oath, deposes and says: That he is attorney for the Long Lake Lumber Company, one of the respondents in the above entitled proceeding; that on the 20 day of February, A. D. 1943, he sent by registered mail, through the United States Post Office in Coeur d'Alene, Idaho, a copy of the within Separate Answer of Respondent, Long Lake Lumber Company to Petition for Enforcement of an Order of the National Labor Relations Board in the above entitled matter, addressed to Mr. Ernest A. Gross, Associate General Counsel, National Labor Relations Board, Washington, D. C., and that postage and registry fees were paid, and a return receipt requested.

That at the time said copy was sent there was a regular communication by mail between Coeur

d'Alene, Idaho, where affiant resides, and has his office, and Washington, D. C.

C. H. POTTS

Subscribed and sworn to before me this 20 day of February, A. D. 1943.

[Seal] WILLIAM B. McFARLAND,
Notary Public in and for the State of Idaho, re-
siding at Coeur d'Alene, Idaho.

[Endorsed]: Filed Feb. 23, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

SEPARATE ANSWER OF RESPONDENT, F.
D. ROBINSON, TO PETITION FOR EN-
FORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit:

Comes now F. D. Robinson, one of the respond-
ents in the above entitled matter, and files herein
his Separate Answer to the Petition for Enforce-
ment of an Order of the National Labor Relations
Board filed in this Court, and in answer to said
Petition, denies, admits and alleges as follows, to-
wit:

(1) Admits that the respondent F. D. Robinson
is engaged in business in the State of Idaho within
this judicial circuit, but denies that he has ever

been guilty of any unfair labor practices. Admits that this Court has jurisdiction of this Petition.

(2) Admits that all of the proceedings described in paragraph (2) of the Petition were duly had and that the same are matters of record in this Court.

(3) Admits that on August 22, 1941, the Board's decision and order were served upon the respondent F. D. Robinson through his attorney, E. E. Hunt.

Further answering said Petition, and as a cause why the Petition should not be granted and the enforcement of said Order denied, as to this Respondent, F. D. Robinson, and why said Order should be set aside as to this Respondent, Respondent F. D. Robinson alleges:

(1) That the said Order of the National Labor Relations Board as set forth and contained in paragraph (2) of said Petition, in so far as it relates to this Respondent, is wholly invalid and improper under the Act, and is contrary to law, in that said Order is based on findings of fact which are not supported by substantial evidence.

(2) That the evidence is insufficient to support the following findings of fact made by the Board, to-wit:

(a) That the respondent F. D. Robinson has been guilty of any unfair labor practices whatsoever.

(b) That the respondent F. D. Robinson has been guilty of the unfair labor practices of discouraging membership in any Labor Union.

(3) That there was no competent evidence what-

soever upon which to base the following findings, to-wit:

(a) Upon request, bargain collectively with International Woodworkers of America, Local 239, or any other Labor Organization as exclusive representative of the employees of the respondent F. D. Robinson.

(b) To offer to the employees mentioned in Appendix A immediate and full reinstatement to their former or substantially equivalent positions for the reason that none of the employees of the respondent F. D. Robinson have been discharged.

(c) That there was no competent evidence introduced to show that the employees listed in Appendices A and B had lost any pay by reason of discrimination upon the part of the respondent F. D. Robinson, and, that on the contrary, the evidence conclusively shows that his operations were seasonal and that the shut-down complained of was due entirely to weather conditions.

(4) Further answering the Petition on file herein, respondent F. D. Robinson alleges the fact to be that during the years 1940, 1941, and 1942 none of his employees have ever requested him to bargain with them or with any Union upon their behalf concerning wages, labor conditions or any other matters whatsoever. That respondent F. D. Robinson and his employees, during said period of time and now, have worked together harmoniously and that no disputes have arisen concerning rates of pay, hours of labor, working conditions or any other matter whatsoever.

(5) That this respondent now is, and at all times has been, willing to negotiate with any and all his employees concerning any and all matters described in the National Labor Relations Act. That the respondent F. D. Robinson and his attorney have been, and still are, available at all times for the purpose of meeting with his employees or any representative or committee speaking for and upon behalf of his employees. That the employees of the respondent F. D. Robinson are satisfied with their employment, working conditions, hours of work, rate of pay, and all other matters effecting said employer and his employees, and that said employees have never requested International Woodworkers of America, Local 239, affiliated with the Congress of Industrial *Occupations*, or any other labor Union, to act as their representative in negotiations with this respondent.

Wherefore, this Respondent prays that a Decree be entered herein, dismissing the Petition of the National Labor Relations Board for Enforcement of the Order referred to herein, and that the Order of the Board set forth in said Petition be set aside and that the enforcement thereof be denied so far as this Respondent is concerned.

Dated at Sandpoint, Bonner County, State of Idaho, this 24th day of February, A. D., 1943.

EVERETT E. HUNT,

Attorney for Respondent,
F. D. Robinson

Residence and P.O. Address:
Sandpoint, Idaho.

State of Idaho,
County of Bonner—ss.

F. D. Robinson, being first duly sworn, deposes and on his oath says:

That he is one of the Respondents in the above entitled proceedings and that he makes this verification as such.

That he has read the above and foregoing Answer, knows the contents thereof and that the statements made therein are true as he verily believes.

F. D. ROBINSON

Subscribed and sworn to before me this 24th day of February, 1943.

[Seal] E. K. FINROW

Notary Public in and for the State of Idaho, residing at Sandpoint therein.

My commission expires May 15, 1945.

AFFIDAVIT OF MAILING

State of Idaho,
County of Bonner—ss.

Alice Allbee, being first duly sworn, deposes and on her oath says:

That she is a stenographer employed in the office of Everett E. Hunt, Attorney at Law, Sandpoint, Idaho, and at the request of said Everett E. Hunt, on the 24th day of February, 1943, she sent by registered mail, through the United States Post Office in Sandpoint, Idaho, a copy of the within Separate

Answer of Respondent, F. D. Robinson, to Petition for Enforcement of an Order of the National Labor Relations Board in the above entitled matter, addressed to Mr. Ernest A. Gross, Associate General Counsel, National Labor Relations Board, Washington, D. C., and that postage and registry fees were paid, and a return receipt requested.

That at the time said copy was sent there was a regular communication by mail between Sandpoint, Idaho, where affiant resides, and is employed, and Washington, D. C.

ALICE ALLBEE

Subscribed and sworn to before me this 24th day of February, A. D., 1943.

[Seal] E. K. FINROW

Notary Public in and for the State of Idaho, residing at Sandpoint therein.

My Commission expires May 15, 1945.

[Endorsed]: Filed Feb. 27, 1943. Paul P. O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA No. 10368

United States of America—ss.

The President of the United States of America to
Long Lake Lumber Co., Spokane, Washington:

Greeting:

Pursuant to the provisions of Sudivision (c) of

Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 12th day of February, 1943, a petition of the National Labor Relations Board for enforcement of its order entered on August 22, 1941, in a proceeding known upon the records of the said Board as "In the Matter of Long Lake Lumber Company and F. D. Robinson and International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations, Case No. C-1729," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 12th day of February, in the year of our Lord one thousand, nine hundred and forty-three.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
Eastern District of Washington—ss.

I hereby certify and return that I served the annexed Order to Show Cause and Petition on the therein-named Long Lake Lumber Company by handing to and leaving a true and correct copy thereof with James M. Brown, President, personally at Spokane, in said District on the 16th day of February, 1943.

WAYNE BEZONA

U. S. Marshal.

By LOREN T. COULTER

Deputy.

[Endorsed]: Filed Feb. 18, 1943. Paul P. O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA No. 10368

United States of America—ss.

The President of the United States of America to
Frank D. Robinson, Sandpoint, Idaho:

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 12th day of February, 1943, a petition of the National Labor

Relations Board for enforcement of its order entered on August 22, 1941, in a proceeding known upon the records of the said Board as "In the Matter of Long Lake Lumber Company and F. D. Robinson and International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations, Case No. C-1729," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 12th day of February, in the year of our Lord one thousand, nine hundred and forty-three.

[Seal] PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
District of Idaho—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named

Frank D. Robinson by handing to and leaving a true and correct copy thereof with him, together with a copy of the Petition attached thereto, personally near Colburn, Idaho, in said District on the 18th day of February, A. D. 1943.

ED. M. BRYAN,

U. S. Marshal

By J. BRUCE BLAKE

Deputy

[Endorsed]: Filed Feb. 24, 1943. Paul P. O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA No. 10368

United States of America—ss.

The President of the United States of America to
International Woodworkers of America, Local
119, 314 Southwest 9th Avenue, Portland,
Oregon:

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 12th day of February, 1943, a petition of the National Labor Relations Board for enforcement of its order entered on August 22, 1941, in a proceeding known upon the records of the said Board as "In the Mat-

ter of Long Lake Lumber Company and F. D. Robinson and International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations, Case No. C-1729," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 20th day of February in the year of our Lord one thousand, nine hundred and forty-three.

[Seal] PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
District of Oregon—ss.

I hereby certify and return that I served the annexed Order to Show Cause and Copy of Petition on the therein-named International Woodworkers of America, Local 119, 314 S. W. 9th Ave., Portland, Oregon, by serving Carl Winn, Vice Presi-

dent, by handing to and leaving a true and correct copy thereof with Carl Winn, Vice President, personally at Portland, in said District on the 25th day of February, 1943.

FRANK B. UPSHAW

U. S. Marshal.

By GEORGE VRANIGAN

Deputy.

[Endorsed]: Filed Feb. 27, 1943. Paul P. O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA No. 10368

United States of America—ss.

The President of the United States of America to
International Woodworkers of America, Local
119, Attention: Mr. Amos Barnett, Box 704,
Coeur d'Alene, Idaho:

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 12th day of February, 1943, a petition of the National Labor Relations Board for enforcement of its order entered on August 22, 1941, in a proceeding known upon the records of the said Board as "In the Matter of Long Lake Lumber Company and F. D. Rob-

inson and International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations, Case No. C-1729," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 20th day of February in the year of our Lord one thousand, nine hundred and forty-three.

[Seal] PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

RETURN ON SERVICE OF WRIT

United States of America,
District of Idaho—ss.

I hereby certify and return that I served the annexed Order to Show Cause together with a Copy of the Petition attached on the therein-named Amos Barnett by handing to and leaving a true and cor-

rect copy thereof with him personally at Coeur d'Alene, Idaho, in said District on the 25th day of February, A. D. 1943.

ED. M. BRYAN

U. S. Marshal

By J. BRUCE BLAKE

Deputy

[Endorsed]: Filed Mar. 8, 1943. Paul P. O'Brien, Clerk.

United States of America
Before the National Labor Relations Board

Nineteenth Region

XIX - C - 538

In the matter of:

LONG LAKE LUMBER COMPANY and
F. D. ROBINSON

and

INTERNATIONAL WOODWORKERS OF
AMERICA, Local No. 119

The District Courtroom of Bonner County,
Idaho, County Building, Sand Point, Idaho.

March 11, 1940.

TESTIMONY

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m., as follows:

Before:

Joseph L. Hekton, Trial Examiner.

Appearances:

Patrick H. Walker,

Attorney, National Labor Relations Board,

Nineteenth Region,

Dexter-Horton Building, Seattle, Washington.

Thomas P. Graham, Jr.,

Dexter-Horton Building, Seattle, [1*] Washington.

E. E. Hunt,

Sand Point, Idaho,

Representing Frank D. Robinson, Respondent.

C. H. Potts,

Coeur d'Alene, Idaho,

Representing the Long Lake Lumber Company. [2]

PROCEEDINGS [5]

J. M. BROWN, SR.

called as a witness by and on behalf of the Board,
being first duly sworn, was examined and testified
as follows:

Direct Examination

Q. (By Mr. Walker) Your name is J. M.
Brown, Sr.? [9] A. Yes.

Q. And you live in Spokane, Washington?

A. Yes.

*Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of J. M. Brown, Sr.)

Q. What is your official position with the Long Lake Lumber Company? A. President.

Q. How long have you held that position?

A. Twenty-one years.

Q. You were such officer in the years 1936 to 1939? A. Yes, sir.

Q. And are at present? A. Yes, sir.

Q. And where is the principal place of business of the Long Lake Lumber Company?

A. Spokane, Washington. [10]

Q. What is the nature of the business in which the Long Lake Lumber Company is engaged?

A. Manufacturing. [11]

Q. How many mills are operated by the Long Lake Lumber Company?

A. We own two mills; the Phoenix and the Hedlund.

Q. Both of those mills are located in Spokane?

A. Yes, sir. [13]

Q. What type of timber or species of timber is cut in your mills?

A. White pine, Ponderosa pine, cedar, spruce, hemlock, fir and larch.

Q. And what types of lumber—what type is sold, respecting the finish of the grain, rough?

A. All kinds. [14]

Q. What is the raw material which is procured for the operation of the mills?

A. Logs; logs only, I guess.

Q. Where are the sources of your timber situated?

(Testimony of J. M. Brown, Sr.)

A. They are on five railroads out of Spokane.

Q. Some of your timber comes from Caribou Basin? A. Yes.

Q. And some comes from the country in the area of the Columbia River? A. No.

Q. Do you get any of your timber from that Coulee project? A. No.

Trial Examiner Hekton: Is the Caribou Basin in Idaho? [15]

The Witness: Yes.

Q. Twenty-two miles from here?

A. Yes, it is in Idaho.

Q. (Mr. Walker): In addition to the Caribou Basin, what other sources are there for your timber?

A. We go out as far as 190 miles on all these railroads.

Q. Roughly, in an area of 190 miles in any direction from Spokane?

A. Well, no; you would be in the wheat fields if you went in some directions.

Q. Wherever there is timber, with that limitation, in any direction?

A. Available to the railroads.

Q. Are any of these sources of timber which you have mentioned, timberlands owned by the Long Lake Lumber Company? A. Yes.

Q. Where are the two standing timber areas which are owned by the Long Lake Lumber Company located?

(Testimony of J. M. Brown, Sr.)

A. I think we own timber and timberlands on all the area I have mentioned.

Q. Some of this timberland within the area you have described is located in Washington, is it?

A. Yes.

Q. And some is located in Idaho, is it?

A. Yes. [16]

Q. Is any of it located in Montana?

A. No; I am not so sure about Montana.

Q. Then your present recollection is that all of your timber lands are located in Washington or Idaho? A. Yes.

Q. And logs are delivered to your plant——

A. (Interrupting): Just a moment please.

Q. Yes?

A. We don't own any timber in Montana, I am sure.

Q. Some of the timber processed at the mills is derived from Montana, is it?

A. Some of the logs are; yes.

Q. And how are the logs delivered to the plant?

A. On cars and by truck.

Q. When you say by cars you mean railroad cars? A. Yes.

Q. And what system hauls the logs used at the mills?

A. All the railroads out of Spokane. [17]

Q. (Mr. Walker): Can you give me the total number of sales for 1939?

A. Not exactly; approximately. [20]

Q. Very well. A. About fifty million feet.

(Testimony of J. M. Brown, Sr.)

Q. And of that amount approximately how much constituted deliveries effected by rail?

A. I could not say.

Q. Is the bulk of your sales made by rail?

A. Are you talking of logs or lumber?

Q. I am speaking of lumber.

Mr. Potts: I would like to ascertain if his answer related to logs or lumber.

A. The answer is 50 million feet and it related to lumber. The next question, please.

Q. (Mr. Walker): Would the bulk of the fifty million feet of sales be made by rail delivery?

A. What do you call the "bulk"?

Trial Examiner Hekton: More than 50%?

The Witness: More than 50%, yes.

Q. (Mr. Walker): Of the whole amount of your sales in 1939, approximately how much—how much constitutes sales made outside of the State of Washington?

A. I could not tell you.

Q. Would it be more than 50% of all your sales?

A. Yes, it would.

Q. And the balance would be intrastate sales?

A. Yes. [21]

Q. What was the value of your sales for 1939, Mr. Brown?

A. I anticipated that question and have tried to think; but I cannot remember.

Q. How frequently are shipments of finished goods made from your mills?

A. Every day.

(Testimony of J. M. Brown, Sr.)

Q. What was the last normal year of operation of your mills as to the volume of sales, the number of employees and the number of working hours?

A. What was that last, please?

Q. The last year, the normal operation, in your experience?

A. You mean in volume, or dollars?

Q. With volume or dollars or sales, the number of employees and the number of working hours.

A. I think last year is a good example.

Q. Does the Long Lake Lumber Company operate for accounting purposes on a calendar year basis or a fiscal year basis?

A. Calendar year.

Q. Mr. Brown, have you ever directly employed men who perform work at Caribou Basin?

A. Only one man; we have employed men to supervise the cutting.

Q. The men you speak of are your son and Mr. Breen?

A. Yes.

Q. But you have not employed any men engaged in, directly [22] in the usual manual or productive labor actually?

A. Yes.

Q. For setting the rate of compensation of anything like that?

A. No.

Q. Have you ever directly discharged any men employed at Caribou?

A. No.

Q. Has Mr. Robinson ever requested you to engage workers for Caribou?

A. Not that I remember. [23]

Q. Do you know when the dues and assessments are payable?

A. No, I don't.

(Testimony of J. M. Brown, Sr.)

Q. Do you know whether they are yearly or quarterly or monthly? A. I don't know.

Q. Mr. Brown, would you mind ascertaining what—upon what basis the Long Lake Lumber Company pays its dues and assessments to the Associated Industries of Spokane and the amount for the year, or whatever the period is; I wonder if you would likewise ascertain what the value of the sales for 1939 were?

A. May I—if I am going to have to get this information it should be written down; I may forget it.

Trial Examiner Hekton: Counsel will supply you with what he wishes.

Mr. Walker: I will make some notes of it for you.

Cross Examination

Q. (By Mr. Potts): I will ask you a few questions to clarify one or two matters brought out by your examination. Now, in the first place, what is the Caribou Camp to which reference has been made?

A. It is Mr. F. D. Robinson's camp.

Q. Mr. F. D. Robinson's logging camp?

A. Yes, sir.

Q. Located where? [25]

A. Near Samuels, Idaho.

Q. In Bonner County, Idaho? A. Yes.

Q. With reference to men employed in that camp, do you know or have you ever had anything to do with their employment? A. No.

(Testimony of J. M. Brown, Sr.)

Q. And when I say you, I mean the Long Lake Lumber Company.

A. No; so far as I know now.

Q. What is the fact as to whether or not Mr. Robinson employed his own workmen in that camp?

A. He has.

Q. Have you or has the Long Lake Lumber Company ever had anything to do with saying what individuals should be employed in that camp?

A. None whatsoever.

Q. Or when they should be employed?

A. No.

Q. Or what wages should be paid them?

A. No.

Q. Or how long they should work? A. No.

Q. Or whether or not they should be discharged at any time? A. No. [26]

J. M. BROWN, JR.

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Walker): What is your name?

A. J. M. Brown, Jr.

Q. You also reside in Spokane?

A. Yes, sir.

Q. And you are the son of the Mr. J. M. Brown, Sr., who just testified? A. I am.

(Testimony of J. M. Brown, Jr.)

Q. And by whom are you employed?

A. By the Long Lake Lumber Company.

Q. What is your present position?

A. Well, I work as assistant woods superintendent, assistant. [29]

Q. In 1939 you were at Caribou in the position of assistant to the woods superintendent, were you?

A. Yes, sir.

Q. At whose directions, Mr. Brown, did you first assume that position?

A. Well, at my father's.

Q. Prior to assuming the position of assistant to the woods superintendent, did you discuss the matter with your father—did you? A. Yes.

Q. What did he discuss with you?

A. Well, he outlined to me my duties in that operation or [31] whatever operation I was on and what my duties were and what information they wanted in the office.

Q. Will you elaborate on that; elaborate a little, Mr. Brown.

A. We were logging with certain contractors and they logged timber for us and put it on cars and we have a contract with them, and sometimes a contract with the people buying timber; and my duties are to see that those contracts are lived up to, and by that I mean, if they are not I am to report in to the office.

Q. Did your father suggest to you when you were to go to Caribou, at the time when you were having this discussion?

(Testimony of J. M. Brown, Jr.)

A. That was one of the points, yes.

Q. Did your father suggest where you were to stay when you were at the operation?

A. No.

Q. Were any arrangements made in that regard?

A. Whatever arrangements I make when I stay someplace, I make the arrangements.

Q. In the event you found the work not being performed as required by the terms of a contract, who were you to see?

A. Well, under normal circumstances it would be natural to inform the contractors.

Q. Anyone else? A. No. [32]

Q. Did you always report as you have indicated, to the contractors? A. To the contractors?

Q. Yes.

A. Well, inasmuch as I would see, if I was in camp—I would see something wrong, I would tell someone there that I was aware of it, but I don't remember if it came up very often.

Q. What did you mean by saying you might tell someone there?

A. Well, for instance, if a man has some straw boss and they were cutting the logs the wrong way, I might report to him that I was aware of it and would have a record of it.

Q. It might be a straw boss out on the job?

A. Yes.

Q. When you first arrived at Caribou, whom did you see?

(Testimony of J. M. Brown, Jr.)

A. I didn't arrive at Caribou to see anybody in particular; I arrived at Caribou to see where the cutting was.

Q. I mean when you arrived at Caribou, with whom would you make contact?

A. I know the roads and where the timber is and where it is being cut, and I do not necessarily contact anybody; my job is to go out and see what is being done in the woods.

Q. After having been out in the woods, do you discuss the matter with anyone?

A. You mean discuss what I see? [33]

Q. Yes.

A. Yes, I suppose I would. We always talk about our work, you know.

Q. And whom would you have those discussions with?

A. I probably have discussed things with the other men—discussed them—not pertaining to our business, no; but I mean with reference to the work and what occurred in the woods, what I thought was of interest; and I am always after a certain amount of information as I am supposed to be in the process of learning this business.

Q. It would be natural, wouldn't it, that you would come back from, well, say some work on section 17 and discuss it with Mr. Robinson and Mr. Davis and Mr. Breen and possibly all three of them, or possibly one of the three?

A. Yes, possibly I would.

Q. That would be just natural, wouldn't it?

(Testimony of J. M. Brown, Jr.)

A. If they happened to be there.

Q. Did Mr. Robinson know that you were assigned to Caribou before you arrived there?

A. I don't know.

Q. (Trial Examiner Hekton): Did you see him when you got there?

A. I will tell you, you know in the woods your time is irregular.

Q. You can tell me whether you saw him there when you got [34] there.

A. I didn't stay there; I am in and out of the place.

Q. The first time you came out there you saw Mr. Robinson, didn't you?

A. I don't know whether I did or not. In a matter of days I would, naturally.

Q. (Mr. Walker): As a matter of fact your father had told Mr. Robinson that you would be up there, hadn't he?

A. That I don't know—yes; in that capacity, that was understood, certainly, yes. I didn't understand what you meant at first.

Q. (Mr. Walker): He also told Mr. Robinson why you were coming and what you were to do there, didn't he? A. Yes, sir.

Q. Why did your father assign you to those duties at Caribou?

A. Well, sometimes I wonder. I imagine that I was in a position to make contacts with the workers and from our relationship I understood I was to get into a position to handle the job.

(Testimony of J. M. Brown, Jr.)

Q. Was the reason you have just given the only reason you know of?

A. Of course, if you want a reason, he always has said if you are going to operate in the lumber business the best place and the place to get to know it is the woods; so when [35] I started out to work I became interested in the woods and I imagine that is one of the reasons that I am in the capacity I am in.

Q. How did you go about performing your duties?

A. Well, performing—oh, I see—you want it by examples?

Q. Yes.

A. Such as I can give. Assuming we have an operator and contractor and he is operating the timber and producing logs to be shipped to us I think that—to begin with we have certain specifications how the logs have to be cut, and that is included in the contract and naturally the only place you are capable of finding out whether these logs are being cut properly and do something about it if they are not, is to go into the woods and then there are certain laws of the State to be complied with such as brush disposal, and the size of the timber to be cut and certain other fire hazards with regard to camps and all that to be observed, and the logs have to be manufactured properly in the woods, and by that I mean we don't want to have logs which have been cut into, cracks or bends in the tree, and things similar to that; those are my duties.

(Testimony of J. M. Brown, Jr.)

Q. Let us have a verbal picture of Caribou when you have just arrived at—the main camp.

A. Yes. I might come to the cook house.

Q. Yes, and you might go on out to where the men are? [36]

A. Yes.

Q. You go out after you have been to the cook-house to where the men are working?

A. Yes, or where they have been working; I am generally behind where they cut.

Q. Do you measure the height of the stumps?

A. That is one other thing I do.

Q. Do you measure the log lengths?

A. Yes.

Q. Do you watch the men in their work to see they are falling the standing timber properly?

A. If I didn't pay any attention to how they fall them—oh, yes, you take a man who knows his work in the woods, generally the easiest way for him is the best one for us. Some men take a tree and fall it over a stump; in that case then I would have to report it back to the office.

Q. You see that the strip is taken clean?

A. Yes, we check up on that, and as far as the cleaning all the time goes, after they clean the section we come in afterwards and inspect that; or it might not be that way; it depends on the location and how many thousands of timber have to be cut.

Q. To what office is it that you make your report?

A. To Spokane.

(Testimony of J. M. Brown, Jr.)

Q. Going back to the discussion about taking a strip up [37] there, by that I didn't have reference to the brush disposal. A. No.

Q. I meant taking all the trees that were merchantable in the strip?

A. That was the reference I had when I said that: We came back when they finished the section, or half section; we came in and checked off their cutting.

Q. And saw that they had cut the logs clean?

A. Yes, all merchantable timber. We have to do that, because generally, I mean speaking of this country here, we are cutting somebody else's timber and they demand it in our contract, that their logs are cut clean.

Q. And you observe that they do not smoke in the fire season?

A. I have nothing to do with that; the Forest Service have men in the woods and so do the Timber Protection Association in the boundaries which looks after that.

Q. Do you observe the rate of progress at which the cutting is going on?

A. You mean by the area?

Q. Yes.

A. Of course I don't have to do that. They have reports in the office where there are scalers; and it is the rule of the Long Lake Lumber Company to have a scale report once a week. [38]

Q. And that is generally enough information as far as the scale goes?

(Testimony of J. M. Brown, Jr.)

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(Testimony of J. M. Brown, Jr.)

A. That is generally enough information as far as the scale goes.

Q. The scale report goes in once a week; and that would more correctly reflect the rate of log shipments, wouldn't it? A. Yes. [39]

Q. Did you observe and report generally that the logging is being done efficiently? A. Yes.

Q. And being done in the most economical manner?

A. When I am speaking of efficiency I was speaking of all things so far as the logs being delivered; and economically; I don't believe I have had occasion to report on that.

Q. Do I understand you that the Long Lake Lumber Company is not interested in the financial outcome of the enterprise?

A. Oh, yes, sure we are. [41]

Q. (Mr. Walker): Mr. Brown, have the officers who were located at Caribou ever undertaken the direction and construction of roads at the operations?

A. Have the officers of what?

Q. I am speaking of yourself and Mr. Breen.

A. The construction of the roads?

Q. Yes.

A. You mean at Caribou?

Q. Yes.

A. You mean pertaining to logging operations?

Q. Yes, that is correct. A. No.

Q. Or have they directed the laying out of the roads? A. No.

(Testimony of J. M. Brown, Jr.)

Q. Did your father ever give you any instructions as to [46] whether or not you were to confer with the men directing the workers?

A. No; except he told me not to interfere with the work.

Q. Have you followed those instructions?

A. Yes.

Q. In other words, have you found the men violating the terms of the contract and if so what were your instructions in that regard?

A. You are speaking of the men on the operations?

Q. Yes.

A. Violating the terms—well, of course, the only way it would have affected me was on the cutting of the logs into lengths, and that of course I would have to report to the office.

Q. That is the only way in which the men doing the work at Caribou could violate the contract.

A. Not the only way; we have a contract with the Humbird Lumber Company too.

Q. In case you found the men violating the terms of the contract with the Humbird Lumber Company, what were your instructions in that regard?

A. To report back to Spokane.

Q. Anyone else? A. No.

Q. Would you confer with the men? [46-a]

A. No.

Q. Even though the violation took place in your presence?

A. Well, I don't know how that could exactly

(Testimony of J. M. Brown, Jr.)

happen, a violation of the contract could not take place at any particular time; and that would be after.

Q. There could not be an isolated instance in which any of the men engaged in the work at Caribou could violate any of the terms which existed between the Long Lake Lumber Company and the Humbird Lumber Company?

A. Yes, there could be an isolated instance, such as cutting over the line into somebody else's territory or timber; there would be that one chance in a thousand of its happening at the time; but I don't believe it has happened.

Q. Have there been any other violations of the terms of the agreement other than with the Humbird Lumber Company, other than you mentioned?

A. There may or may not have been; I don't believe it. I have several jobs to watch but they are not of the type of violations of the contract.

Q. What were your father's instructions in the event of violation of the terms of any of the contracts or of any of the terms of the agreement, if such took place in your presence?

A. Well, I don't remember of him having said anything specifically concerning it.

Q. Did you ever direct or confer with the men?

[47]

A. Well, not pertaining to my work.

Q. Did you ever direct the men in their work?

A. No.

Q. Your memory is clear on that, is it?

(Testimony of J. M. Brown, Jr.)

A. Yes, sir.

Q. You are sure of it? A. Yes, sir.

Q. Your father's instructions were to you that you were to exercise your best judgment on the job; is that it? A. Yes, sir.

Q. And your father invested you with that discretion?

A. Not with the discretion of using my best judgment.

Q. Not in as far as the work went?

A. Yes, as far as the work went.

Q. In other words, you could exercise your discretion based on the exercise of your best judgment? A. Yes.

Q. You understood it that way?

A. I understood it that way as it pertained to my duties.

Q. And your father understood that?

A. Yes, sir.

Q. And it was understood, was it, that the Long Lake Lumber Company would stand back of your exercising your own judgment?

A. I assume that is so but I never had it stated as such. [48]

Q. You were responsible to your father as an officer of the Long Lake Lumber Company?

A. Yes, sir.

Q. And the Long Lake Lumber Company was responsible for your acts?

A. I assume that is the procedure; I really don't

(Testimony of J. M. Brown, Jr.)

know; we never had any occasion to know how that would work; I know an agent's responsibility.

Q. You know you hold a responsibility to the Long Lake Lumber Company? A. Yes, sir.

Q. And how are you paid, Mr. Brown, I don't care how much it is but—is it on a salary basis?

A. Yes, I get paid a salary.

Q. By the month? A. Yes.

Q. And traveling expenses? A. Yes.

Q. And you are paid by the Long Lake Lumber Company? A. Yes.

Q. You have visited Caribou lately, have you?

A. Yes, sir.

Q. How frequently have your calls been to Caribou over the two years you held this position?

A. I was thinking of that awhile ago; I think I spent half [49] my time there.

Q. Would it run three or four days a week?

A. We work six days a week, it would be about three of them; it would not necessarily be in a group of three; it might be five days, and I might not be back for quite awhile.

Q. Following your arrival at Caribou, there may have been instances where you remained there two or three or maybe four days at a time?

A. Yes.

Q. Before leaving the operation? A. Yes.

Q. And when you did remain at Caribou where did you stay there?

A. At a cabin by the—I don't know how to de-

(Testimony of J. M. Brown, Jr.)

scribe it. Are you familiar with the location of the camp?

Q. No, I am not.

A. I stayed in one of the cabins there.

Q. You yourself occupied the cabin?

A. Yes.

Q. Was there anybody else occupied the cabin?

A. Well, Mr. Robinson and his son and, oh, that is all that were with us; I guess Mr. Robinson's son too.

Q. And Mr. Breen?

A. He comes up occasionally.

Q. Where did you take your meals when you were staying over [50] at the operation?

A. In the cookhouse.

Q. Did Mr. Robinson charge you rent for your cabin, for your occupancy of the cabin, or did you have any arrangements in that regard?

A. No, it is customary, you know, in camp, as far as I have heard, that you get your accommodations when you come in. [51]

Q. Mr. Brown, what is Mr. Breen's full name?

A. J. E. Breen.

Q. And he also was employed by the Long Lake Lumber Company? A. Yes, sir.

Q. Where is he living? A. In Spokane.

Q. And what is his present position? [53]

A. He is a woods superintendent.

Q. How long has he worked for the Long Lake Lumber Company?

A. Gosh, I don't know exactly; it is for sev-

(Testimony of J. M. Brown, Jr.)

eral years, I know; I mean I don't remember the date of it.

Q. Did he occupy the position of woods superintendent for the Long Lake Lumber Company in the years 1935 and 1936—'37 and '38 and '39 at Caribou?

A. What do you mean "at Caribou"; he is superintendent for the Long Lake Lumber Company; that covers all those years.

Q. During those years was he at Caribou as superintendent in the Long Lake Lumber Company's operations?

A. When he was there, yes; he has been woods superintendent during those years.

Q. In the position of woods superintendent, did he exercise the duties of that position during the years I have mentioned at Caribou?

A. Yes; of course, that is out of my territory; he is my boss; I have nothing to say to him.

Q. Do you know at whose directions he would come to Caribou?

A. I presume under my father's directions.

Q. And the year 1939—and all the rest of my questions I will confine to a certain year so that your understanding will be clear in that regard. In the course of Mr. Breen's duties, did he direct where the cutting was to take place? [54]

Q. Mr. Brown, when did you first come to Caribou in the operating season of 1939?

A. Let me see; you mean approximately or the exact date?

(Testimony of J. M. Brown, Jr.)

Q. No; just approximately.

A. I think it must have been in May some-time.

Q. Do you remember the instance of work ceasing on June the 7th, 1939?

A. June the 7th, yes, I remember.

Q. Do you remember about a Union meeting in the camp during the preceding evening?

A. Yes, sir.

Q. When did you first learn that the Union meeting was to be held at the camp?

A. I heard about it afterwards, after it was done.

Q. The first you learned of the Union meeting having been held was after it had been held?

A. Yes, sir.

Q. Prior to that time you had no knowledge of there being a Union meeting or of its being held in the camp?

A. No.

Q. Were you in camp during the day on which the Union meeting was held? [56]

A. I came in that night.

Q. During the course of the evening?

A. Yes, sir.

Q. About what time was it, do you recall?

A. I don't recall exactly the time; it was after supper, I know that. [57]

Q. Did Mr. Robinson know where to locate you during your absence?

A. Did Mr. Robinson know where to locate me during my absence?

(Testimony of J. M. Brown, Jr.)

Q. Yes.

A. Not directly; he could get hold of me in town; they know there generally where I am.

Q. If he wanted to contact you but did not know where you were, he would call the office in Spokane?

A. Yes, sir.

Q. And they in turn would inform Mr. Robinson where you were?

A. Yes, sir.

Q. And if you were not in the office in Spokane—

A. Yes, sir.

Q. Now, on Tuesday, June the 6th, when did you first see Mr. Robinson?

A. When I came into camp that night.

Q. That was the first time that you saw him that day?

A. Yes; as I recall it I know I was in there and am almost positive I did not see him before I saw him that evening.

Q. In the matter of holding a Union meeting, when you did learn of it, it made a distinct impression upon you; it did, didn't it?

A. Oh, yes. [59]

Q. And that is why it is outstanding in your memory?

A. Yes, sir.

Q. And your memory is definite about that evening?

A. Yes, on coming in that evening.

Q. And the first time you saw Mr. Robinson that day was when you arrived in the camp that evening?

A. Yes, the first time I remember.

Q. About what time is supper usually held at

(Testimony of J. M. Brown, Jr.)

the camp? A. I think it is at 5:00 o'clock.

Q. Now, Mr. Robinson told you about the meeting having been held, did he? A. Yes, sir.

Q. Mr. Robinson discussed the fact that the men had organized and held a conference with him?

A. Well, I don't remember just exactly what he discussed; he told me about the meeting, they had the meeting; and the thing is, the whole thing, he said, was "Those guys seem pretty sore at me." That is all I can remember about the discussion.

Q. Did he tell you what the Committee had presented to him?

A. No, I don't remember it.

Q. Did he say the Committee had made any demands upon him?

A. I don't remember that.

Q. Did he tell you that there had been a meeting of the Union as a whole, separately and distinct from the meeting [60] of the Committee with Mr. Robinson?

A. No, I don't think he said that; I don't remember if he did.

Q. Was your father notified as to the meeting?

A. Well, he knew about it, but I do not know how soon he was notified.

Q. How did you learn he was notified?

A. I saw him about two days later; I think it was approximately two or three days later; I hardly remember that part of it.

Q. I appreciate that; but I want you to take your time and be sure that you, in your own mind,

(Testimony of J. M. Brown, Jr.)

recall the facts which you testify to, because that happened some time ago and I want you to be sure they are very clear. What did your father tell you that he had learned?

A. Oh, Gosh, I don't remember.

Q. Did he tell you from whom he had learned that there was a meeting? A. No.

Q. You are sure of that, are you?

A. Yes, sir.

Q. When you conferred with Mr. Robinson at the camp on this evening of June the 6th, did you learn what organization had held the meeting or had organized the men?

A. Well, I assume I did; I was aware of it afterward and at [61] what time I became familiar with it, I could not say.

Q. Now, when you arrived at camp, whom did you see that evening? [62]

A. I saw Mr. Robinson; I know; but who else, I don't remember; I suppose I generally see about everyone in the camp when I get in there.

Q. When you arrived did Mr. Robinson say anything to you, immediately on the time of your arrival?

A. I believe that was the time he told me they had the meeting; it was just over, and I believe that is when he told me with reference to his position.

Q. Immediately on the time of your arrival, where did you first see Mr. Robinson; in the office or outside? Can you recall that? A. No.

(Testimony of J. M. Brown, Jr.)

Q. Immediately upon your arrival did Mr. Robinson extend a greeting to you; and did he say anything to you in greeting you?

A. Oh, I don't know whether or not, whether he had any smart remark to make on my arrival in the greeting of that particular night.

Q. Does it refresh your memory that the greeting on your part in meeting Mr. Robinson, his greeting to you was, "Where the hell have you been?"

A. I can't remember; I don't remember that.

Q. I don't know whether I have gone over this before or not: Did Mr. Robinson tell you what had transpired at this meeting between himself and the Committee? [63]

A. I think he told me what was wrong or what it was about, I don't remember to what extent he spoke or what he told me.

Q. What is your recollection of what he did tell you?

A. What interested me mostly was a surprise as far as that is concerned; I was surprised at what had happened as I was unfamiliar with it and I don't remember anything, because as my memory of it; but as to what was said, I can't remember.

Q. Prior to this evening, this particular evening, you had no knowledge that the men were organizing and consequently the sudden revelation of that to you by Mr. Robinson made a definite impression on your mind?

(Testimony of J. M. Brown, Jr.)

A. Yes; well, you know how rumors go up and down the country, and operators hear about some particular party being organized and all that; and I heard that there had been some one around there organizing; but I had heard it so many times I didn't pay much attention to it and I don't know to what extent I did know; but you know, you are aware of those things going on more or less when you are around; but as to it being applicable to Mr. Robinson or any other individual, I am not sure whether I had that in my mind at the time.

Q. Your recollection is that prior to this particular evening you had heard some one of the other operators say there was an organization going on; is that the idea?

A. An operator—you can go into the restaurants around [64] here and hear more than you get in the newspapers; and in Spokane it is the same thing.

Q. Is this correct; that prior to that evening you had heard some gossip that there was organization going on in this area? A. Yes, sir.

Q. Did you learn at that time what organization it was that was attempting to organize this area?

A. I heard, if I remember correctly, that both the A. F. of L. and the C. I. O. were organizing here.

Q. About how long before this evening of June the 6th did you first hear gossip of any attempt being made to organize in this area?

(Testimony of J. M. Brown, Jr.)

A. I have heard it for five years.

Q. You have heard it for five years?

A. That there was going to be an organization of labor by representatives of one of the major Unions.

Q. And that was gossip in this community which kept recurring over the period of five years; is that correct? A. Yes.

Q. Coming back to 1939 with respect to the month of May, when you first came to this area, when did you first hear the gossip about the organization?

A. It is hard to remember just when, but I remember hearing it in town. [65]

Q. Was it shortly after you came to the Caribou operations? A. I think so.

Q. When was it you first came into Caribou in 1939? A. It was during May.

Q. Along in the forepart?

A. I believe it was.

Q. And it was along in that time when you first heard the gossip of organization going on in this particular area? A. Yes, sir.

Q. Excepting only the information you received from gossip, the only direct information you had about the organization of the work at Caribou was from Mr. Robinson on that evening of June the 6th, is that correct? A. I don't recall.

Q. What do you mean by that?

A. I mean some particular person may have talked to me, I don't recall; but now at the present

(Testimony of J. M. Brown, Jr.)

time I don't recall anything of that nature; those are the two sources.

Q. (Trial Examiner Hekton) You refer to gossip and to Mr. Robinson? A. Yes.

Q. (Mr. Walker) Upon learning of an attempt to organize this area in the Spring of 1939, did you communicate that information to your father?

A. I think I must have; I don't recall doing it but I think [66] must have.

Q. I want to call your attention to the testimony concerning your father having learned there was a Union meeting at the camp on the night of June the 6th. Did your father ever tell you that he gained that information of there having been a Union meeting that night of June the 6th?

A. What is that?

Mr. Walker: Strike the question.

Q. (Mr. Walker) Mr. Brown, I want to call your attention to the testimony about your father having learned of a meeting having been held at the camp on the night of June the 6th. Did your father ever tell you whether or not the source of information of there having been a Union meeting on the night of June the 6th was from Mr. Robinson? A. No.

Q. And is your recollection clear in that regard?

A. I assume it to be because if he had I would have remembered it; that is the only way.

Q. Did you have a discussion with your father

(Testimony of J. M. Brown, Jr.)

about the event which transpired at the Committee meeting on the night of June the 6th?

A. I cannot say I remember; I don't remember talking to him.

Q. Are you sure of that?

A. I am sure; but I cannot recall it. [67]

Q. If you had a talk with your father concerning what transpired at the Committee meeting on June the 6th, it has not left an impression on your mind?

A. No; but it would if I had had.

Q. Do you know a Mr. Herbert Johnson?

A. There is a fellow named Johnson—is that the one who was the organizer?

Q. That is correct. A. I met him.

Q. Who introduced you to him?

A. I believe Mr. Robinson did.

Q. When did you meet him there?

A. It was that night up there.

Q. Shortly after your arrival?

A. Yes, sir.

Q. Did you talk with Mr. Johnson?

A. Yes; I did for a few minutes.

Q. And where did you have this talk with him?

A. I can't just recall where; but I remember talking to him.

Q. Was there anyone else present?

A. Mr. Robinson; sure, Mr. Robinson was there.

Q. During the talk with Mr. Johnson, did a telephone call come in camp?

A. I don't remember. [68]

(Testimony of J. M. Brown, Jr.)

Q. And is your memory clear in that regard?

A. Not that I remember a call.

Q. If you had engaged in a telephone conversation that night with anyone, would that have left an impression on your mind?

Mr. Potts: Objected to as improper cross examination.

Trial Examiner Hekton: I have a vague feeling it is a little objectionable, but not very much so. Can you re-frame it, do you think?

Mr. Walker: I will do that.

Q. (Mr. Walker) Where was the telephone located at the camp in 1939?

A. Well, it was in what they call the office.

Q. Do you recall when you had the talk with Mr. Johnson?

A. As I recall, it was in a building; it must have been; I can picture that in my mind.

Q. You are not able to recall which building?

A. No.

Q. During the talk with Mr. Johnson, did anyone or anything occur to interrupt your conversation with Mr. Johnson?

A. I don't remember.

Q. And did anyone call you out of the conversation during the time of your talk with Mr. Johnson?

A. I can't remember, honestly.

Q. Did you talk with your father that night?

[69]

A. I don't remember whether I did or not.

Q. All right.

(Testimony of J. M. Brown, Jr.)

A. I have tried to picture the scene, but it is quite confusing.

Q. During the course of the conversation with Mr. Johnson, was Mr. Robinson called out of the conference?

A. I cannot honestly remember.

Q. Did Mr. Robinson engage in a telephone communication with your father?

A. Not to my knowledge. [70]

Q. The operations at Caribou did close down on the morning of June the 7th, didn't they?

A. Yes.

Q. And you and your father had talked this situation of the men organizing over, had you?

A. I presume we had. I don't remember it; but I assume we had. [72]

Q. It is the desire and the policy of the Long Lake Lumber Company to get along with the men and have no labor trouble?

A. Yes.

Q. Did you and your father decide to apply that policy, and that if there was to be any possibility of violence or disturbance up here, that the best thing to do was to shut down the plant or the camp?

A. You see, our interest is not to shut the camp down. All we are interested in is getting out the logs.

Q. You and your father are not interested in whether Caribou operates, is that correct?

A. No.

(Thereupon, the last question and answer referred to were read by the reporter.)

(Testimony of J. M. Brown, Jr.)

A. No.

Q. If the Caribou should cease to be available for use as a source of logging supplies, would that have any interest to the Long Lake Lumber Company? [73]

A. Did you take my answer to that in the last question, which I gave to you?

Mr. Walker: Read it.

(Thereupon the last question referred to was read as follows: "If the Caribou should cease to be available for use as a source of logging supplies, would that have any interest to the Long Lake Lumber Company?")

A. You put that question, and I say we want the logs, we outline our work and we want the logs.

Q. Is the Long Lake Lumber Company interested financially in whether or not the Caribou operations continue?

Mr. Potts: That is objected to as asking for a conclusion, it is asking for his opinion and conclusion about matters not within his purview; he is not an officer who has been shown to be in charge of the financial end or general policies of this company.

Trial Examiner Hekton: Answer, if you know.

(Thereupon, the last question and answer referred to were read by the reporter.)

A. As I told you previously, I am working there and I am aware that Mr. Robinson is behind; nat-

(Testimony of J. M. Brown, Jr.)

urally I assume they would be interested in running the operations.

Mr. Walker: That is all. [74]

Q. How much of your time that you spent out in the woods in 1939, to the best of your knowledge and judgment, was spent in the Caribou Basin in Frank D. Robinson's logging camp; about what proportion?

A. What proportion of my time was spent in that?

Q. How much of your time did you spend there and how much elsewhere?

A. I would say that it was about 50% of my time.

Q. That is, you spent about 50% of your working time when you were out performing your line of work around the Caribou operation?

A. It was a little different from most of the operations, because of our contracts with the Humbird Company.

Q. I am going to ask you why it was you spent so much of [80] the time on that operation?

A. Because of the reason of the Humbird Company—one reason is we have to get along with the manager, a fellow named Pearson, and he is a little eccentric, not eccentric I would say, I would not use that word, but exacting in his contracts and anyone can believe that when you get into that timber you have to be more particular than in other timber that you buy. We find it that way in connection with that timber.

(Testimony of J. M. Brown, Jr.)

Q. And does your purchase of the Humbird Lumber Company embrace a large quantity of timber? A. Yes, in several places.

Q. And covering a long period of years?

A. Yes, it will cut over a large period of time.

Q. And are you required to cut a minimum each year? A. Yes, sir.

Q. Is that a substantial amount?

A. Yes, it is quite a large amount.

Q. Take the timber which should have been cut; do you know whether—you mentioned the necessity of cutting the logs to run the mills according to the way you laid out the work for each year? A. Yes, sir.

Q. On your direct examination.

A. Yes, sir. [81]

Q. Do you recall what was contemplated by these operations of Mr. Robinson that he should produce in the year 1939?

A. Yes; our contract called for 10 million feet.

Q. That was the minimum, ten million feet of white pine logs? A. Yes, sir.

Q. To be cut from that timber?

A. Yes, sir.

Q. (Trial Examiner Hekton) 1939?

Mr. Potts: 1939. A. 1939.

Q. (Mr. Potts) How did that compare with the quantity of sawlogs on other operations you have mentioned in this area, for instance those that were produced in the Pack River operation?

(Testimony of J. M. Brown, Jr.)

A. Last year we were just starting. I think they got out about a million feet, if I remember correctly.

Q. Was this one of the major operations on which the Long Lake Lumber Company depended for its logs in 1939?

A. Through Mr. Robinson?

Q. Yes. A. Yes, we planned on that. [82]

Q. Was this your particular job, this Caribou Basin; was this a job you looked after primarily apart from the other assistants? A. Yes.

[84]

(Thereupon the last question was read as follows: "When you arrived on the job and in performing your work, what would you do, generally speaking; now, I am not trying to ask you to remember any particular trip in detail, but just generally what would you do on that area, on that job, and on that operation?")

A. In general, I would see that Mr. Robinson's operations were conforming with our contracts with the Humbird Company, and that Mr. Robinson in delivering his logs would——

Q. (Interrupting): How would you determine that; what would you do on the job to reach that determination?

A. We are obligated not to create unnecessary fire hazards and one of the things with the Humbird Company, which we had trouble with them was on—we had such an area opened up it [85] was

(Testimony of J. M. Brown, Jr.)

crowded and a fire hazard arose in these little spots, and one of my very serious commissions this year was to see that Mr. Robinson cleaned up this area described in the section and cleaned it up by going into a new body of timber.

Q. That was in conformity with your contract obligations to the Humbird Lumber Company?

A. In conformity with the obligations to the Humbird Lumber Company, yes.

Trial Examiner Hekton: At this point we will take a ten minute recess.

(Thereupon at this time a short recess was taken, after which proceedings were resumed as follows:)

Q. (Mr. Potts) You have mentioned the creation of a fire hazard and the cleaning up of the timber on the section, in order to comply with the Humbird Lumber Company contracts. What other phase of operation did you check up on and examine from time to time for the same purpose?

A. Well, like for the purpose of fulfilling the Humbird contract.

Q. For the purpose of determining whether or not Mr. Robinson was logging his timber in conformity with the requirements of the timber purchase contract and with the Humbird Lumber Company?

A. One was to see that he removed all the merchantable [86] timber included in the contract. [87]

(Testimony of J. M. Brown, Jr.)

Redirect Examination

Q. (Mr. Walker): At Caribou, during the times you were there in looking over the operations, it was for the purpose [88] of determining whether or not Mr. Robinson was doing his work in the manner required by the terms of the Humbird contract, is that correct?

A. That was one of the reasons.

Q. In the event of his work not being done in the manner required by the Humbird contract terms, you would bring that to his attention?

A. Either to him or report it to Spokane.

Q. And in the event the report was simply sent to Spokane, what was done then?

A. In that instance, I believe, the woods superintendent would act on it.

Q. And how would he call that matter to Mr. Robinson's attention?

A. Well, the usual method is by going and talking to him.

Q. So in either event you would talk to him in the first instance or the report would go to Spokane and there be called to Mr. Breen's attention, and Mr. Breen would come to Caribou and talk with Mr. Robinson?

A. Yes, sir; or if it was necessary my father would talk to him.

Q. Your father would come to Caribou and talk to him?

(Testimony of J. M. Brown, Jr.)

A. I believe he would; I don't remember any instance where he did that, however.

Q. Why didn't you bring it to Mr. Robinson's attention in [89] the first instance when you were there?

A. The reason, I recall one instance, if he were not there and I had to leave it had to be taken care of.

Q. In the event Mr. Robinson was there and you were there, why didn't you bring it to his attention personally?

A. In those cases I would.

Q. And then you would require Mr. Robinson to do such work as the contract required to be performed at Caribou?

A. I could tell him to do it in conformity with the contract, referring to our contract.

Q. You could not require him to do that; could the Long Lake Lumber Company require him to do the work in the manner stated in the Humbird contract?

A. That which was provided in our contract with Mr. Robinson.

Q. And you could require Mr. Robinson to do his work in accordance with the terms of the Humbird contract?

A. They could require him to operate in accordance with the terms of the Humbird contract?

Q. Yes.

A. The Long Lake Lumber Company would have to.

(Testimony of J. M. Brown, Jr.)

Q. What representative of the Long Lake Lumber Company?

A. It would be myself or Mr. Breen or my father.

Q. That would be your purpose in talking with Mr. Robinson in the first instance? [90]

A. Yes.

Mr. Potts: Is the answer yes?

The Witness: Yes.

Q. (Mr. Walker): Who are the other two assistants to Mr. Breen?

A. Well of course, I have never had occasion to operate in that end; there is one fellow who operates almost mostly in yellow pine, Murphy & Gillespie.

Q. However, this Caribou operation and the other one adjacent to the Caribou area was assigned to you, is that correct?

A. Yes. There are certain stipulations, like when you work for somebody, for a boss, you do what he wants.

Q. What do you mean by that?

A. Mr. Breen wasn't there all the time; he assigned it to me to watch it.

Q. Was Caribou planned to be the major source of Idaho timber for the Long Lake Lumber mills in 1939?

A. That I am not in a position to know about what that was.

(Testimony of J. M. Brown, Jr.)

Q. In 1939, Mr. Robinson was required to produce a minimum of ten million feet of Idaho white pine?

A. Yes, sir. [91]

F. D. ROBINSON,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker) What is your name?

A. F. D. Robinson.

Q. Where do you reside, Mr. Robinson?

A. Sand Point.

Q. Are you engaged in the logging business?

A. Yes, sir.

Q. When did you first start as a logger? [95]

A. Oh, eighteen or twenty years ago.

Q. Have you been engaged in logging ever since then?

A. Yes, sir.

Q. Mr. Robinson, do you mind keeping your voice up, please; and I will try to do the same.

A. All right.

Q. In the 1939 logging season, did you conduct logging operations at Caribou Basin?

A. Yes.

Q. How long had you been engaged in that particular enterprise?

A. Ever since four years, when we started there; when we started in the Basin.

(Testimony of F. D. Robinson.)

Q. Were you the first one to start in there at Caribou Basin? A. Yes, sir. [96]

Q. Will you describe the circumstances under which you undertook the opening up of the Caribou Basin timber?

A. The Long Lake Lumber Company was supposed to put the main road in and have men ready to go into the camp and from there on I took it; and they also built the camp.

Q. What do you mean by that?

A. All of the camps are the Long Lake Lumber Company's property.

Q. Do you mean the structures?

A. Yes; the buildings; yes, sir; the buildings, themselves.

Q. Who made the contact which brought about the engaging of yourself to open up the Caribou Basin property? A. Mr. Brown.

Q. He contacted you? A. Yes, sir.

Q. How did that meeting come about?

A. Well, like all the rest of them, I suppose. I was logging on Section 11 and when this job came along I asked for it.

Q. Who was present at the discussion about it? [99]

A. I think Mr. Jimmie Brown and Dave Brown and I think Mr. Breen himself.

Q. What was the discussion at that time?

Mr. Hunt: Objected to on the ground that the evidence shows that any oral conversation or oral understanding between Mr. Robinson and Mr.

(Testimony of F. D. Robinson.)

Brown or anyone else for the Long Lake Lumber Company was thereafterward reduced to writing, taking the form of an executed contract; and the evidence and the pleadings here show that that contract is in existence. Therefore, the contract is the best evidence and we object to any further testimony on this ground and for the further reason it is immaterial. I might ask counsel if it is not true that we furnished him with a copy of the contract and they still have it.

Trial Examiner Hekton: I take it the contract is the best evidence and I think the question is properly asked and is leading up to the execution of the contract.

(Thereupon the last question was read by the reporter, as follows: "Question: Who was present at the discussion about it? Answer: I think Mr. Jimmie Brown and Mr. Dave Brown and I think Mr. Breen himself. Question: What was the discussion at that time?")

A. What is it you want to know about it?

Q. (Mr. Walker) Do you understand the question, Mr. Robinson? [100]

A. No, I didn't understand it. We drew up a contract and I was to put the logs in for so much money, so many feet; but there wasn't anything specified about how much I should put in each month. My contract calls for so many million feet in a stipulated length of time; a year's time.

Q. Did you have a discussion as to what terms

(Testimony of F. D. Robinson.)

would be embodied in the contract before the contract was reduced to writing? A. Yes, sir.

Q. What was the discussion?

A. It was to be according to the Humbird contract and according to the two contracts similar or the same; and I had my contract with the Long Lake Lumber Company apply to the Humbird contract.

Trial Examiner Hekton: We are trying to get at how you arrived at the agreement, finally arrived at it; you didn't just go in and start signing a contract; you had conversation?

The Witness: Yes.

Trial Examiner Hekton: Tell us about that.

The Witness: They were supposed to put the roads in and put up the buildings and I was supposed to get out in the section so much timber per year, different poles and different species, and lengths and percentages of lengths, the height of the stump, and how much there was to come out each year; and I got the contract and started in and worked [101] after moving in there; and I supervised the main road; it was under my supervision; I put the roads in there for the Long Lake Lumber Company; I built the camps and roads for the Long Lake Lumber Company before starting to log in there.

Q. (Mr. Walker) Do I understand you engaged the men who constructed the roads, Mr. Robinson? A. Yes, I did.

Q. And you laid out the lines of the roads?

(Testimony of F. D. Robinson.)

A. Mr. Breen laid out the lines on the roads and I had charge of it.

Q. Mr. Breen surveyed the lines of the road?

A. Yes.

Q. And everything was under your supervision?

A. Yes, sir.

Q. Including the engaging of the men and the building of the road? A. Yes.

Q. And with respect to the construction of the camp buildings, all that was under your supervision?

A. That was all under my supervision; they paid for the buildings after I had them up.

Q. All the men were under your supervision and direction?

A. Yes, they were under my supervision.

Q. Did anyone else supervise the construction of the camp buildings, other than yourself? [102]

A. No, unless it was some of the men I had working for me who were under me.

Q. I understand that.

A. There were suggestions from Mr. Brown and Mr. Breen about how the bunkhouse should be built or the cookhouse should be built.

Q. Merely suggestions? A. Yes.

Q. Which were talked over with them?

A. Yes.

Q. Each year since you began at Caribou, have the provisions of your agreement been substantially the same? A. Yes, sir.

(Testimony of F. D. Robinson.)

Q. In the year 1937, did the agreement provide for a specific rate per thousand of logs delivered at the landing?

A. Yes; on cars—delivered on cars.

Q. There was such a similar provision for 1938?

A. Yes, sir.

Q. And for 1939? A. And for 1939; yes.

Q. Were the provisions whereby the Long Lake Lumber Company was to construct the main road and the camp buildings set out in the agreement of that year? A. Yes, sir.

Q. Have you stated all the provisions which were discussed [103] and ultimately embodied in the written agreement? A. I think so. [104]

Q. When was the last year of normal operation as to the number of men or number of working hours with the amount of logs produced?

(Thereupon the last question was read.)

A. 1938, I think.

Q. 1939 was not a normal season?

A. Yes, it was kind of wet though, the first part of the season, it rained so much.

Q. Do you understand what I mean? What I meant was, the amount of logs produced in 1939—was it normal with respect to the number of logs produced in 1938? A. Yes.

Q. And was 1937 a normal year?

A. Yes, sir.

Q. In your experience, Mr. Robinson, what has

(Testimony of F. D. Robinson.)

been the labor turnover; has it been high or low from season to season?

A. I don't know. It seemed to be the same.

Q. Approximately what percentage of your employees return year after year?

A. Some months we work 150 men and I think as high as 400 during the peak of the work.

Q. During the season? [105]

A. I think my books show around 300 or 400 turnover in one month.

Q. Out of the total of 150 required for production—

A. (Interrupting) That was in 1937.

Q. How was the 1938 season with respect to the turnover, was it high or low?

A. It was pretty high.

Q. Substantially the same as you have described for 1937? A. For 1937, yes.

Q. What was the '39 season?

A. It was about the same. [106]

Q. At the time of the opening up of the Caribou Basin, you consulted with Mr. Brown, Sr., about the construction of the main camp buildings, did you? A. Yes, sir. [111]

Q. Who owns the buildings? [115]

A. The Long Lake Lumber Company.

Q. Upon the termination of this arrangement between yourself and the Long Lake Lumber Company, who gets the buildings?

A. The Long Lake Lumber Company built the

(Testimony of F. D. Robinson.)

buildings and they reimbursed me for the buildings.

Q. They what?

A. They put the buildings in and they were supposed to put the main road in and the buildings in; I was supposed to put them in, that is, under my supervision, and they would give me credit for the buildings.

Q. Who owns the office?

A. The Long Lake Lumber Company.

Q. What is the situation as to the ownership of the other buildings at other camps; I am not speaking of the main camp.

A. Well, we have a few shacks around the woods which some of these gypos built.

Trial Examiner Hekton: What is a gypo?

The Witness: He is a sub-contractor.

Q. (Mr. Walker) Who owns the buildings where Mr. Smalling's camps are located?

A. Those belong to Mr. Smalling.

Q. Upon the termination of the arrangement whereby Mr. Smalling is under contract, who gets the structures?

A. Mr. Smalling.

Q. And about Mr. Morrow's camp? [116]

A. Mr. Morrow has no camp.

Q. No buildings?

A. No; he has a temporary barn I built and one of those little shacks which belongs to the Long Lake Lumber Company.

Q. Who gets those?

(Testimony of F. D. Robinson.)

A. The Long Lake Lumber Company when I get through with them.

Q. Now, were you the only individual who supervised the construction of the buildings at the main camp? A. Yes.

Q. And you directed the men in their work?

A. Yes, with the exception I had a strawboss or two around.

Q. And Mr. Breen did not have anything to do with that? A. No.

Q. Or the supervising of the men? A. No.

Q. And the same with Mr. Brown, Sr.?

A. No, he did not.

Q. Did he direct the men in their work in any way? A. No. [117]

Q. (Mr. Walker) Do any of the officers of the Long Lake Lumber Company inspect your books from time to time? A. No.

Q. They have no access whatever to your books at all?

A. No; only the time where I send in the payroll in order to get the amount of money due each month.

Q. Outside of that they have no accessibility to your books at all? A. No.

Q. And never discuss your books with you?

A. No.

Q. Or inspect your books?

A. It is just about the amount the money we use from month to month.

(Testimony of F. D. Robinson.)

Q. You understand what I mean, by inspecting the books?

A. Yes, sir; they never have.

Q. They never have? A. No.

Q. Now in the years past the Long Lake Lumber Company has had a Mr. Gillespie actively engaged there during that time? A. Yes.

Q. And in addition to Mr. Gillespie there has been Mr. Breen? [119] A. Yes.

Q. And in addition there has been Mr. Brown, James Brown, Jr.? A. Yes, sir.

Q. Will you explain who Mr. Brown, Jr., sees when he comes to the camp?

A. He generally always sees me; he generally comes out there and when there is anything wrong he comes to me as to short logs, high logs, short stumps, trees broken or trees not cut, such things as that; he comes to me about it.

Q. What does he do in the matter of operation?

A. He goes out and measures the stumps and checks up the percentages; we have different percentages, with different lengths of logs; we have eighteen and twenty; and he checks on the percentages.

Q. Does he see the men on the operation?

A. Yes, he sees men on the operation and he goes amongst them when he is out there checking.

Q. Does he give you any suggestions?

A. No.

Q. Does he tell you what strip to work on?

(Testimony of F. D. Robinson.)

to put on more fallers and buckers? A. No.

Q. They never have done that? A. No.

Q. And if you were ahead of your schedule on the delivery of logs have ever Mr. Brown, Jr. or Mr. Breen told you to cut down on the number of fallers and buckers? A. No.

Q. Is power skidding more economical than the ordinary manner of skidding? A. Yes.

Q. Is it faster? A. Yes. [123]

Mr. Hunt: The witness did not testify the Long Lake Logging Company owed any of that equipment up there. He said the Long Lake Logging Company financed him, and I object to counsel twisting the question so it shows that the Long Lake Logging Company owns the equipment. That is very important here and I ask that the question of counsel be stricken from the record. [123-a]

Trial Examiner Hekton: I think with the explanation maybe it should not be objectionable.

Mr. Hunt: Counsel asked how much of the other equipment does the Long Lake Logging Company own; and it is not shown they own any of it; and the witness' answer was he was financed by the Long Lake Lumber Company.

Trial Examiner Hekton: I think it is not necessary to make any further explanation.

(At the request of counsel, the preceding questions and answers were read.)

Mr. Hunt: I think counsel should withdraw the question; and I object on the ground that the rec-

(Testimony of F. D. Robinson.)

ord does not show that any equipment is owned by the Long Lake Logging Company, because the question now asked is how much of the other equipment is owned by them.

Trial Examiner Hekton: It asks how much of the other equipment is owned by the Long Lake Lumber Company. Answer the question.

The Witness: There is none of it owned by the Long Lake Lumber Company.

Q. (Mr. Walker) None of the equipment you used in the operations at Caribou is owned by the Long Lake Lumber Company? A. No, sir.

Q. You are sure of that?

A. Yes, sir. [124]

Q. Upon the expiration of the working arrangement between yourself and the Long Lake Lumber Company, who gets all the equipment you use in any phase of the logging operations referred to?

A. Will you read that?

(Thereupon the question referred to was read.)

A. They are my own.

Q. All the gas and oil used by you in the '39 operations were paid for by you? A. Yes, sir.

Q. And collected by you?

A. By orders or by check.

Q. That is the checks were ordered paid out of your office?

A. Yes; and orders given authorizing the Long Lake Lumber Company to make a payment to the Shell Oil Company; that is the way of it.

(Testimony of F. D. Robinson.)

Q. What orders are you referring to; I didn't get it.

A. The Long Lake Lumber Company paid any bills. They could not pay a bill unless I gave a written order to pay the account at any time.

Q. That was done by you?

A. In one or two cases. [125]

Q. In 1939? A. Yes, sir.

Q. How about in 1937, was that arrangement followed?

A. I don't remember that far back.

Q. Did that arrangement exist between you and the Long Lake Lumber Company in 1938?

A. Yes.

Q. Before the Long Lake Lumber Company could pay anything out of your account by reason of this arrangement existing between you and the Long Lake Company, the Long Lake Lumber Company required you to authorize them to make a payment; is that correct?

A. Yes, with an order from me.

Q. And you did that? A. Yes, sir.

Q. On gas and oil?

A. I don't remember whether it was gas and oil or something else; I know there were two or three instances where I have done that.

Q. Have you the total scale of logs cut in 1938?

A. Yes, sir.

Q. Will you state what it was, please?

Mr. Hunt: That is objected to on the ground it is not the best evidence. Demand has been made

(Testimony of F. D. Robinson.)

upon us to produce that matter and it is here. I don't think we should trust to [126] his memory of what the scale was, as to the number of dollars; and we have been asked to produce it and the book-keeper is here and it is available. He is in the room and counsel can ask that it be produced; and it is available for them.

Trial Examiner Hekton: He may answer.

A. I don't know.

Mr. Walker: It makes no difference to me whether it is by oral testimony or by the production of the books.

Q. (Mr. Walker) Is that true of 1939?

A. I think so.

Q. Were your efforts at Caribou for 1937 financially successful?

Mr. Hunt: That is objected to; surely that is immaterial, whether this man was successful or unsuccessful. It has no bearing on the issues here.

Trial Examiner Hekton: I don't know whether it has. I don't know what the definition of successful or unsuccessful is.

Mr. Potts: The question should be whether the logging was made at a profit or a loss for that year.

Trial Examiner Hekton: You may answer if you know.

The Witness: I think I sustained a loss.

Q. (Mr. Walker) Were the operations at Caribou for 1938 conducted at a profit or at a loss?

A. At a loss.

Q. And were the operations during the year

(Testimony of F. D. Robinson.)

1939 at Caribou [127] conducted at a profit or at a loss?

A. I suppose they were conducted at a loss. [128]

Q. Mr. Robinson, yesterday ended up with our talking about the operating deficit at the end of the season, in the years 1937, 1938 and 1939; I wanted to call your attention to where we left off.

A. Yes.

Q. During this course of the 1939 season you purchased some caterpillar double drumjammers?

A. Yes, sir. [134]

Q. How many? A. Two.

Q. What was the cost of those machines?

A. I could not tell you off-hand without going to the records.

Q. Have you a recollection of how much they cost you? A. I would say around \$5,000.

Q. Each? A. Yes, sir.

Q. Who signed the checks to the employees of the Caribou camp? A. I did.

Q. Anyone else? A. Mr. Davis.

Q. Who formerly signed the checks?

A. I did.

Q. Just you alone? A. Yes, sir.

Q. When did the practice start of both of you signing checks? A. In 1939.

Q. That joint signature was ordered by Mr. Brown, Sr., wasn't it? A. No. [135]

Q. When you had gone in the hole on operations up at Caribou, they hadn't shut down; but the Long

(Testimony of F. D. Robinson.)

Lake Lumber Company has continued to advance you funds, haven't they? A. Yes.

Q. Are the Caribou operations seasonal?

A. Yes. [137]

Q. What is the usual opening time?

A. January—the first of the year.

Q. After you opened in January, what type of timber did you get out?

A. Wait a minute, I didn't get that. Do you mean on the opening of camp or when I took my contract?

Q. When you start working.

A. It is May.

Q. And when is the usual closing time?

A. October, some time.

Q. About along in the last of October?

A. Sometimes the first; it depends on the weather.

Q. The opening process is gradual, isn't it, both as to the number of employees and the number of logs gotten out? A. Yes.

(Thereupon, the last question and answer were read.)

Q. And usually you complete your re-opening in a period of two weeks; I mean, it takes two weeks until you have gotten your crews built up and normally operating, with normal operating strength?

A. Sometimes it takes two months.

Q. What is the usual situation?

(Testimony of F. D. Robinson.)

A. The first of July when we open up and cut a bit.

Q. At the end of the season, you close down gradually, don't you? [138] A. Yes.

Q. Because of the shortness of the season you try to get the maximum of production while it lasts, don't you? A. Yes, sir.

Q. Is there a peak in the volume of production of logs? A. Yes; generally August.

Q. Has the Caribou operation ever experienced a labor dispute? A. Has it what?

(Thereupon the last question was read.)

A. No; I don't think so.

Q. Have operations at Caribou ever been interrupted by reason of a labor dispute?

Trial Examiner Hekton: Do you understand the question?

The Witness: No, I do not understand the question.

(Thereupon the last question was read.)

A. Not while I was working.

Q. There might have been one when the camp was shut down at the end of the season; is that what you mean?

A. No; but in the summer after I was closed down.

Q. Will you state that again, please?

A. Not while I was operating; it was after I had closed down on account of the weather conditions.

Q. When was this? A. June. [139]

(Testimony of F. D. Robinson.)

Q. When?

A. That I had any trouble with labor?

Q. Yes.

A. It was along—it was in July after I had started to operate.

Q. 1939? A. Yes.

Q. Did it affect logging operations; I mean were logging operations interrupted? A. Yes.

Q. Were shipments interrupted?

A. Yes.

Q. For how long a time?

A. I don't know; I would say two or three weeks. [140]

Q. Mr. Robinson, you had made the usual return to the Social Security Department, had you?

A. Yes.

Q. And had Social Security taxes been paid on all employees whether by the day, month or by the scale basis? [152] A. Yes.

Q. And have you had Workmen's Compensation Insurance in force? A. Yes.

Q. And did that insurance cover all types, whether by the month, day or scale basis?

A. Yes.

Q. You have a hospital contract in force?

A. Yes.

Q. And does the hospital contract cover all types of workers whether paid by the day, month or scale? A. Yes. [153]

Q. Are the paydays for all the workers the same? A. Yes, sir.

(Testimony of F. D. Robinson.)

Q. Incidentally, in 1939, when were your pay-days?

A. I think on the 20th and on the 10th.

Q. You had a regular payday on the 10th of each month? A. Yes.

Q. And a draw-day on the 20th, is that correct?

A. The 20th or the 25th; I don't know which.

Q. Does it refresh your recollection that the 25th was draw-day?

A. Yes, I think so. [154]

Trial Examiner Hekton: When was the blacksmith shop completed?

A. I think in 1939 or 1938; I don't know; I think 1939. [155]

Q. That is the only construction which has been done up there since the main camp was built?

A. Yes; I think that is so.

Q. Who owns the blacksmith shop?

A. The Long Lake Lumber Company. [156]

Q. Mr. Robinson, who operates the cookhouse?

A. We have had different ones; I had three different ones last summer.

Q. That is under your direction?

A. Yes.

Q. And the men's boarding place was conducted from there? A. Yes.

Q. Who orders the supplies for the cookhouse?

A. Mr. Davis does it.

Q. And who orders the supplies for the barns?

A. Mr. Davis.

(Testimony of F. D. Robinson.)

Q. About June 7, 1937, how many head of horses did you have at Caribou?

A. I would say around 15 or sixteen; somewhere around that.

Trial Examiner Hekton: Fifty or sixty, did you say?

The Witness: No; fifteen or sixteen.

Q. (Mr. Walker) Do you recall whether or not any supplies were ordered and delivered during the week of June 4, 1939?

A. No, I would not recall that.

Q. You don't remember whether there was any hay delivered? A. No.

Q. Or oats?

A. No, I would not know except from the record.

Trial Examiner Hekton: We will recess here for ten [159] minutes.

(Thereupon at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Hekton: Go ahead, gentlemen.

Q. (Mr. Walker) About how long would three truckloads of hay last the number of head of horses you had in the camp at that time, in the first week of June?

A. I am not sure; I don't know how many horses we had in the first days of June.

Q. Sixteen head.

A. I am not sure whether it was sixteen head. We took some out and we brought some in.

(Testimony of F. D. Robinson.)

Trial Examiner Hekton: If you had had sixteen head of horses how long would it last?

The Witness: It depends on what truck would haul it; sometimes you haul one ton, sometimes two, and sometimes three. I would not know whether it was a ton of hay went up at the time, one ton, or whether it was three ton.

Q. (Mr. Walker) How long would three ton of hay last sixteen horses?

A. A team of horses eats about 50 pounds a day.

Q. Did the crew work on June 4th, Sunday?

A. I think some of them worked; I am not sure whether all worked; some worked; it was immaterial; if they wanted to work, they did.

Q. Not a full crew? [160] A. No.

Q. Did they work on June the 3rd, the preceding date, the full crew?

A. I don't know whether they worked that day or not; I will have to check up on it.

Q. Do you know Leon Wise? A. Yes.

Q. How long did he work for you?

A. About three years.

Q. Was he an employee of yours on June 5, 1939?

A. I think he had been hauling. I think he was hauling for me; I don't know whether he was hauling at that time or not; he was hauling all of the other.

Q. How long had he been in your employ?

A. A few days, I think; he hauled a few loads in May.

(Testimony of F. D. Robinson.)

Q. But he had worked two seasons preceding the 1939 season?

A. Yes, sir; he started in 1938; but did not do much in 1938.

Q. He had worked for you a part of the season in 1938? A. Yes.

Q. Did he work for you in the 1937 season?

A. Yes, I think he did; I am not sure, but I think he worked some in 1937. [161]

Q. Did you have a talk with Mr. Leon Wise on the morning of June 5, 1939?

A. I don't know, I may have talked with him; there was so many I talked with, I would not remember some of them.

Q. Do you recall engaging Mr. Wise in a conversation in your office and Mr. A. R. Davis also being present on the morning of June 5, 1939?

A. I may have talked with them.

Q. You don't remember whether you talked with them or not? A. No.

Q. Do you remember what was said?

A. No, I don't remember anything of it.

Q. Do you remember the morning of June 7, 1939, on work ceasing?

A. It was raining that morning.

Trial Examiner Hekton: Do you remember work ceasing on that morning?

The Witness: Yes.

Q. (Mr. Walker) On the evening of June 6, 1939, you met with a group of your employees, did you? A. Yes.

(Testimony of F. D. Robinson.)

Q. What time was that?

A. It may have been about 6:00 o'clock. [164]

Q. It was sometime after supper had been served, was it? A. I think so; I think it was.

Q. Who were those employees you met with?

A. They were in the office there: Amon Garvin, Boyd Stevens, Clyde Smith, Gregg Moore, and Leon Wise and Mr. Johnson.

Q. Was that Mr. Herbert Johnson?

A. I think that is the name he goes by.

Q. At that time did they tell you that they were a committee which had just been elected at the meeting?

A. Mr. Johnson came into the office and Mr. Johnson started to talk and said, "This is a committee of the C. I. O. this camp is organized 100%."

Q. When had you first met Mr. Johnson?

A. I think that was the first time.

Q. During the course of that meeting——

A. It was in my office.

Q. You hadn't met him at any time prior to that?

A. I don't remember meeting him.

Q. Who introduced you to Mr. Johnson?

A. I think Mr. Wise.

Q. Where did that introduction take place?

A. It was at some place in the camp, I don't remember where it was, but I think it was in the office, as I remember.

Q. Did you agree to meet with the Committee?

[165]

(Testimony of F. D. Robinson.)

A. No.

Q. That was a long time ago and I want you to think back and be sure your memory is clear on that.

A. Yes, my memory is clear.

Q. Now, had you consented to allow the Union meeting to be held in the camp?

A. Yes.

Q. When did you give that consent?

A. As soon as they came up there, as soon as Mr. Johnson came up I allowed them to hold the meeting. I didn't know what it was about at first; and then I found out and told them to go ahead and have the meeting.

Q. Where were you when you consented with Mr. Johnson that the Union meeting could be held?

A. I don't know where it was; in the camp; I know I was in camp, I know that.

Q. When the Committee called upon you they told you they had been elected at a Union meeting?

A. Mr. Johnson told me; yes, sir.

Q. And that was the first time you had met Mr. Johnson?

A. I think it was the first time I met him.

Q. And you had consented that the Union could hold a meeting out there?

A. Yes, sir.

Q. You gave your consent to Mr. Johnson? [166]

A. Yes, sir.

Q. The Union meeting had already been held, hadn't it?

A. I am not sure whether I gave Mr. Johnson or one of the men my consent to hold it. I think I told Mr. Wise they could hold the meeting.

(Testimony of F. D. Robinson.)

Q. Where were you when you gave that consent to Mr. Wise?

A. I don't know where I was in camp; I was in camp, I don't know where,—whether the cook-house or barn or office, or where,—out in the woods, I don't know just where I was at the time I did it.

Q. When did you give this consent to Mr. Wise with respect to the time that the meeting was held?

A. Just before the meeting.

Q. Was anyone with Mr. Wise at the time you gave the consent?

A. I could not answer that because I don't know.

Q. So it was Mr. Wise you gave the consent to, now you think, and not Mr. Johnson?

A. Yes, I think I met Mr. Johnson at the same time with Mr. Wise,—or just after that time; about that time; and I think Mr. Wise introduced me to him.

Q. This was before the meeting?

A. Yes, sir.

Q. You met Mr. Johnson before the meeting was held? A. Yes, just before the meeting.

Q. Who introduced you to Mr. Johnson did you say? [167]

A. Mr. Wise, I think; I am not sure but I think it was Mr. Wise who introduced me to him.

Q. And that was the time that they asked you for your consent to hold the Union meeting?

A. Just before the meeting.

Q. And at that time you did give your consent?

(Testimony of F. D. Robinson.)

A. Yes.

Q. Was there any conversation passed between you and Mr. Johnson at the time you were introduced to him?

A. I don't remember any conversation at that time.

Q. I want you to think back again and refresh your memory so you will be sure about it.

A. Mr. Johnson told me he was with the C.I.O. and wanted to hold the meeting and I told them to go ahead, that they could go ahead and hold the meeting, when I found out what it was for; I didn't know what it was about before, but when they told me, I told them to go ahead and hold the meeting.

Q. Is that all that was said?

A. I think that is all that was said.

Mr. Hunt: Have you answered the question?

The Witness: Yes.

Q. (Mr. Walker) Was there anything else passed between you and Mr. Johnson at that time?

A. No. [168]

Mr. Hunt: This is objected to; he has answered the question three times. It is repetitious.

Trial Examiner Hexton: I think he can answer again.

The Witness: No.

Q. (Mr. Walker) Was there anything further said between you and Mr. Johnson other than you have related?

A. Not to my knowledge.

Q. You cannot remember anything further?

(Testimony of F. D. Robinson.)

A. No.

Q. You are sure of that? A. Yes.

Q. Your memory is clear as to that?

A. Yes.

Q. At the time, didn't you advise Mr. Wise and Mr. Johnson that Mr. Brown, Jr., would be there?

A. No.

Q. You are sure of that? A. Yes.

Q. Did Mr. Brown, Jr., meet the Committee with you? A. No.

Q. Did he later arrive?

A. I think he came into the camp afterward at night sometime.

Q. About when?

A. I don't know, I think it was after the meeting. [169]

Q. How long after the meeting?

A. I don't know.

Q. Had it just broken up?

A. I don't know; I know it was after.

Q. What was said between you and Mr. Brown, Jr. on his arrival, if anything?

A. I just said, "Hello;" that is all I remember.

Q. That is all you did say?

A. I think that is all I said.

Q. Does it refresh your memory that on Mr. Brown's arrival you said to him, "Where the hell have you been?"

A. I don't remember that; I might have said it.

Q. You told Mr. Brown, Jr. what had transpired at the meeting, did you? A. Yes.

(Testimony of F. D. Robinson.)

Q. And did Mr. Brown, Jr. comment on the meeting?

A. No, he never had anything to say.

Q. You told him what had transpired at the meeting?

A. I told him in my office what had transpired.

Q. And when you told him, he did not engage in any conversation with you about what had transpired at the meeting? A. No.

Q. Did he comment at all on the fact that the camp had been organized? A. No. [170]

Q. Not a thing was said between you and Mr. Brown about Union matters whatsoever?

A. No.

Q. Did you and Mr. Brown, Jr. then consult with Mr. Brown, Sr.? A. No.

Q. Did Mr. Brown, Jr. talk with Mr. Brown, Sr.?

A. Not that I know of; that I would not know.

Q. Where is your telephone?

A. In the office.

Q. Where did you talk with Mr. Brown, Jr.?

A. Well, I don't know just where I was, whether in my office, in my place or just where we were.

Q. Now, at this conference with you, the group of employees asked you whether or not you would recognize the Committee, didn't they?

A. I don't think Mr. Johnson mentioned that at all.

Q. The Committee asked you to rehire Mr.

(Testimony of F. D. Robinson.)

Gregg Moore, Mr. Ralph Peterson, Mr. Ed Early, who had been laid off that morning—the morning of June 6, did they? A. Yes.

Q. And you agreed that they would be given employment?

A. They were never fired; they were just laid off because the jammer had broken down and there was nothing for them to do. The jammer was put in the shop and there was no work for them to do until we started the camp, when they were laid [171] off; I didn't say anything at all; I told them when we got restarted we would put them back to work.

Q. That is what you told the Committee?

A. Yes. [172]

Q. Your recollection is that the Committee said nothing whatsoever about the re-hiring of the cedar makers who had been in your employ? [173]

A. Well, these men were all laid off before; there was some I put back to work as soon as the camp opened; but I could not put them back until I reopened the camp.

Mr. Walker: Read the last question.

(Thereupon the last question referred to was read.)

The Witness: No.

Q. (Mr. Walker) The Committee discussed also, did they, the matter of rehiring the men who had been on the payroll previously before any new men were hired who had never been in your employ before; is that correct? A. Yes.

(Testimony of F. D. Robinson.)

Q. And did you agree to that? A. No.

Q. What did you say in that regard?

A. I said I thought I would hire any men I needed in the camp; any man who came into the camp, I would hire him if I needed him.

Q. Anything else? A. That is all.

Q. Did the Committee say anything to you after that statement by you?

A. I don't think so; not to me.

Q. The Committee also asked that the bunk-houses be supplied with blankets and swept clean, or something like that? A. Yes, sir. [174]

Q. And did you agree to that?

A. No, I think I told them that they were swept and that I had a bull-cook who took care of that.

Trial Examiner Hekton: What is that?

Q. You told them you already had a bull-cook who took care of that? A. Yes, sir.

Q. Did the Committee also ask you that the showers be connected up?

A. Yes, and I said yes, and that I would connect them up and I would connect them up—that I would connect up with the stove; they were frozen up and I could not open them up and I had to order parts to get them to work; and that was what I was waiting for, for parts to fix up the showers.

Q. You agreed that the showers would be fixed?

A. I didn't agree to it but I said I was waiting for parts in order to fix it up; the parts had been ordered before and they were to be fixed up when the parts came.

(Testimony of F. D. Robinson.)

Q. Did the Committee also ask that clean inner blankets be had?

A. Yes; I remember that and I told Mr. Johnson that if anyone wanted clean blankets, if the blankets were soiled in two weeks or before that, all that they had to do was to go to the office and get clean ones. [175]

Q. You agreed that that should be done?

A. If the men wanted to go to the office and get them they could have clean blankets; that we were changing them every two weeks, but that every time they wanted a clean blanket they could get it.

Q. Is that the duty of the bull-cook?

A. No; but the men generally go and get them; it was customary for a man when he wanted a clean blanket, he would go and get it, if he had a soiled one; and the bull-cook used to give them a clean blanket every two weeks and take the dirty one.

Q. Prior to June 6, 1939, had the bull-cook who was then in your employ followed that practice with regularity in changing them?

A. I had put the man in there a little bit ahead of the time we were getting organized and everything was frozen up and we could not get things in and out.

Trial Examiner Hekton: The answer would be it had not been the bull-cook's practice. I don't want to put anything in your mind. Mr. Reporter, will you read the question.

(Thereupon the last question referred to was read.)

(Testimony of F. D. Robinson.)

The Witness: Yes.

Q. (Mr. Walker) He had? A. Yes.

Q. The next thing the Committee asked was that the roof of [176] the bunkhouses be repaired, is that correct?

A. I don't remember whether they asked me anything about the bunkhouses or not. The bunkhouses which were leaking were all in good shape. I had a small crew at the bunkhouse with room for 150 men; I had 40 or 50 men at the time, or perhaps 60.

Q. Was there any discussion between the Committee and yourself about the repair of the bunkhouse roofs?

A. I think Mr. Johnson said something about putting paper on one of the bunkhouses.

Q. What did you say?

A. I said there was plenty of bunkhouse room in the bunkhouses without repairing some that we did not need.

Q. Were there some of the bunkhouses not in repair?

A. I think there were some where the snow wasn't shoveled off; I am not sure whether there were any leaking or not.

Q. Did you agree that the bunkhouse roofs should be and would be repaired?

A. I don't know whether I did or not.

Q. What was your answer to the suggestion of the repair of the bunkhouse roofs?

A. I told them there was plenty of bunkhouse

(Testimony of F. D. Robinson.)

room; if any of the roofs leaked, there was plenty of room in the bunkhouses for the crew I had, and the rest of the bunkhouses would be repaired later. [177]

Q. Was that all? A. I think so.

Q. Did the Committee also ask that the electric light plant be fixed?

A. There was nothing mentioned about the electric light plant.

Q. Nothing at all? A. No.

Q. It was in a state of proper operation?

A. I am not sure; I think it was.

Q. Connected up? A. I think so.

Q. And running?

A. I don't know whether it was running at the time or not.

Q. Would the lights burn when they were turned on? A. I think so.

Q. There was absolutely no discussion between you and the Committee about the electric light plant; is that correct?

A. No, I don't think there was any.

Q. Was there any discussion between you and the Committee other than that which you had as you state gone through? A. No.

Q. After Mr. Brown, Jr. arrived that evening, Mr. Johnson joined you two at the office, didn't he?

A. I think so; I think we talked with Mr. Johnson. [178]

Q. Did the three of you have a discussion then?

A. Yes, we were talking.

(Testimony of F. D. Robinson.)

Q. What was it about?

A. I don't remember just what was said.

Q. Do you recall any particular of what was said?

A. Mr. Johnson asked me what I was going to do and I told him that at any time they wished to show me that my camp was organized, that I would recognize it. [179]

Q. Now about what time was it that you had this discussion with Mr. Johnson and Mr. Brown, Jr. being present? [180]

A. It was after the meeting, the meeting in my place.

Q. Probably about seven o'clock or so?

A. I think somewhere about that time.

Q. During the course of the discussion, Mr. Brown, Jr. received a telephone call, didn't he?

A. I would not know.

Q. Why wouldn't you know?

A. Because I had to leave and that was all there was to it; and Mr. Johnson and I left there.

Q. You mean that no one called Mr. Brown, Jr. out of the council?

A. Someone hollered from the office; whether they were talking to Mr. Brown, Jr. or not, I don't know; I don't know what they were doing.

Q. What did they holler?

A. I don't know what they hollered; they hollered for Jimmie and that is all they hollered.

Q. And Mr. Brown, Jr. got up and left the conference?

A. Yes.

(Testimony of F. D. Robinson.)

Q. Where did he go? A. I don't know.

Q. Where was Mr. Davis during the time of this conference with you and Mr. Johnson?

A. I don't know whether Mr. Davis was in the office or where he was. I think he was in the camp at the time. [181]

Q. Was Mr. Davis the one who hollered for Mr. Brown, Jr.?

A. I would not know; there is always someone hollering up there; I don't know whether it was Mr. Davis or whether one of the men.

Q. Did Mr. Brown, Jr. rejoin the discussion then? A. I think he did.

Q. Did he say where he had been? A. No.

Q. Did he make any reference to having answered a telephone call? A. No.

Q. Did he state whether or not he had had a conversation with his father? A. No.

Q. After rejoining you and Mr. Johnson, did Mr. Brown, Jr. announce that the operations would close down; did he? A. No.

Q. Is your memory clear as to that?

A. Absolutely.

Q. You are certain that Mr. Brown, Jr. didn't make such an announcement? A. Yes.

Q. After he came back and rejoined the conference? A. Yes.

Q. When did you first learn that there was to be a meeting [182] on the night of June 6th?

A. About thirty minutes before or half an hour before.

(Testimony of F. D. Robinson.)

Q. Some time before supper?

A. I think it was just before they had their meeting.

Q. Probably about 4:30?

A. It may have been 4:30 or 5:00 o'clock.

Q. When the men were coming in from work?

A. About that time.

Q. Where did you learn that or from whom?

A. From Mr. Wise.

Q. Mr. Wise talked to you and that was the first time you learned that there was to be a Union meeting that night?

A. Yes.

Q. Did you learn what time the meeting was to be held?

A. No.

Q. Did you learn what type of meeting that was or who was convening it?

A. I didn't know whether it was the C.I.O. or the A. F. of L. or what kind of meeting it was at that time.

Q. When you learned the meeting was to be held, you communicated that to Mr. Brown, Jr., didn't you?

A. No.

Q. What did you learn was to be the nature of the meeting?

A. I didn't know.

Trial Examiner Hekton: Is this a convenient place to [183] suspend?

Mr. Walker: I think so. [184]

F. D. ROBINSON

resumed the stand and testified as follows:

Direct Examination (Continued)

Q. (Mr. Walker) Mr. Robinson, do you recall Mr. Brown, Jr. yesterday morning stating that the operator engaged in 1939 on [185] Section 11, or Baldy Mountain, was Mr. Damon Smith?

A. Yes.

Q. From whom did Mr. Damon Smith receive his check? A. From me.

Q. Who was the bull-cook who was in your employ prior to June 7, 1939?

A. Mr. Hendrickson.

Mr. Hunt: What is the name again?

The Witness: Hendrickson.

Q. The first thing on Wednesday morning, June the 7th, you announced that the operations were closing down, did you? A. Yes, sir.

Q. And the operations did close down?

A. Yes, sir.

Q. You paid the men off? A. Yes, sir.

Q. And you directed the men to vacate their bunks, didn't you? A. Yes, sir.

Q. Directed the men to gather in the rigging and the tools? A. Yes, sir.

Q. And shortly after this the Union declared a strike, didn't it?

A. Not to my knowledge until the middle of the month, or two or three weeks later. [186]

Q. Or sometime toward the end of June?

A. Yes, sir.

(Testimony of F. D. Robinson.)

Q. While the strike was on you announced to all the workers they were fired, did you?

A. No.

Q. Do you remember talking to some of the strikers around the town by the Caribou school-house, at which time you told them that they were all discharged and if they wanted to go to work to apply to the National Employment Office?

Mr. Hunt: Can we fix the date—the time and place and who was present when this conversation took place. I am asking counsel to fix the time when the alleged conversation took place, and where it took place, so we can identify it.

Trial Examiner Hekton: Do so.

Q. (Mr. Walker) While the strike was on, men were hired who had not worked at Caribou before June in 1939, is that correct? A. Yes.

Q. Did you consult with Mr. Brown, Sr. about hiring any of these men? A. No.

Q. Did you discuss the resuming of Caribou operations with Mr. Brown, Sr.? A. No.

Q. After June 7th, the next crew which resumed work was [187] about July the 11th, is that correct?

A. I think it was about somewhere around that time.

Q. The strike was still on at that time?

A. Yes.

Q. After the strike was declared—did the strikers set up a picket line? A. Yes.

Q. The crews that resumed work about July the

(Testimony of F. D. Robinson.)

11th were escorted through the picket line, were they? A. No, not all of them.

Q. What do you mean by that?

A. I went through it.

Q. I beg your pardon?

A. I went through that line.

Q. You went through with that crew?

A. Yes.

Q. Do you recall that while the strike was on that Mr. Ratt, the sheriff, at the picket line asked the men how many of them were members of the C.I.O.? A. No, I don't remember that.

Q. How did Mr. Ratt happen to come out to the picket line?

A. I asked him to come out.

Q. Did anyone go out with him in addition to yourself?

A. I don't know whether Mr. Thurlow did.

Trial Examiner Hekton: Who is Mr. Thurlow? [188]

The Witness: He is a deputy under Mr. Ratt.

Q. (Mr. Walker) Do you know Allen Asher?

A. Yes.

Q. What position did he hold in the month of July, 1939?

A. He is a prosecutor, I believe.

Q. And all three of those were out there with you?

A. I don't remember whether Mr. Asher was there or not; I remember Mr. Ratt, he was; he was

(Testimony of F. D. Robinson.)

the one I talked to and there were so many there I didn't pay any attention to them.

Q. You remember Mr. Thurlow and Mr. Ratt being there? A. Yes.

Q. What had you been doing which brought about the occasion of Mr. Thurlow and Mr. Ratt coming out there?

A. It was because they were blocking the road and stopping my men from going through, and piling stuff in the road so I could not get through with my trucks, and shoving the men off the road and accosting the men.

Q. This all happened on this particular day prior to the time that Mr. Thurlow and Mr. Ratt came out there? A. Yes, sir.

Trial Examiner Hekton: Is that the answer, yes?

The Witness: Yes, sir.

Q. And before Mr. Ratt and Mr. Thurlow came out there, you were attempting to get the newly recruited crew through the picket line, is that correct? [189]

A. Yes.

Q. Now, when Mr. Ratt and Mr. Thurlow came out there, did they talk to the men who were with you and who were not on the picket line?

A. There wasn't very many men with me; there was just a few and he talked to the men on the picket line and told them to keep the road open.

Q. Do you recall who some of the men were who were with you?

(Testimony of H. D. Robinson.)

A. I don't know who was with me.

Q. Do you know Mr. Chaney?

A. Fred Chaney was there. I don't know whether he was going up; he had been working before.

Q. You don't know whether he was with you on your way up to camp or not? A. No.

Q. Do you remember Harley Chaney?

A. Yes, he was there with his truck.

Q. He was on his way up? A. Yes.

Q. Do you know Cecil Chaney? A. Yes.

Q. Was he there with you?

A. I don't know whether Cecil was there or not.

Q. Did Mr. Ratt or Mr. Thurlow on this day there by the [190] picket line in your presence talk with either of the two Chaney's, Cecil Chaney or Fred Chaney? A. I don't know.

Q. In your presence?

A. I don't remember him talking to them.

Q. Does it refresh your memory that upon arriving there at the picket line Mr. Ratt asked Mr. Fred Chaney and Mr. Harley Chaney and the other group, or the remainder of the group which was with you, whether or not they were members of the C.I.O.?

A. I don't remember that being asked.

Q. Do you know a man named Skeel?

A. I don't know; he may have been working for me, I don't remember all their names.

(Testimony of F. D. Robinson.)

Trial Examiner Hekton: The question is, do you know him?

The Witness: No.

Q. (Mr. Walker): Do you remember on this particular day at the picket line in your presence that Mr. Ratt turned to the group which was with you and asked them to hold up their hands and say "We are C.I.O. members." A. No.

Q. On this particular day, in the presence of Mr. Ratt and yourself, did Mr. Wise and Mr. Johnson offer to hold an election there in the road at that time to determine whether or not the assembled group held membership in the C.I.O.? [191]

A. I don't remember.

Q. At that time, in the presence of Mr. Ratt and Mr. Thurslow, did you state, "I am not recognizing the C.I.O." A. I did not.

Q. You remember that? A. Yes.

Q. That you did not do that? A. Yes.

Q. Your memory is clear as to that?

A. Yes, sir.

Q. You are sure? A. Yes.

Q. Do you recall on this day, at that particular place, Mr. Johnson and Mr. Wise, in the presence of Mr. Ratt and Mr. Thurlow, offered to produce the membership cards?

A. What is the question?

(Thereupon the last question was read.)

A. No.

Q. Was Mr. Thurlow and Mr. Wise—Mr. Thur-

(Testimony of F. D. Robinson.)

low and Mr. Ratt present during the time you were there at the picket line with your crew?

A. On this particular day?

Q. On this particular day, yes.

A. No, I don't remember that—whether or not.

Q. Were Mr. Ratt and Mr. Thurlow there at the picket line [192] during all the time until your newly recruited crew got through the picket line?

A. They never went through.

Q. Were Mr. Thurlow and Mr. Ratt there at the picket line all the time and did the newly recruited crew stay there until they left?

A. I could not answer that; I think I left before they did, I don't remember.

Q. How long were you there?

A. About an hour.

Q. What did transpire during the course of that hour?

A. I don't remember that, but I know that Mr. Ratt left, just as soon as they left; and the next day——

Trial Examiner Hekton: What happened?

The Witness: I don't remember just what happened.

Trial Examiner Hekton: What do you remember about it?

The Witness: Just what I have told you here.

Q. (Mr. Walker): You remember definitely you did not refuse to recognize the C.I.O.?

A. Yes, sir.

(Testimony of F. D. Robinson.)

Q. What discussion took place which brought about the occasion of you not recognizing or your refusing to recognize the C.I.O.?

A. I think Mr. Johnson asked me if I would recognize the C.I.O. and I said "yes," anytime they showed me they had a [193] majority.

Q. What prompted Mr. Johnson to ask that question of you?

A. I don't know; he just asked it.

Q. He just proceeded to ask you the question, or had you had a discussion with Mr. Johnson?

A. I had spoken about keeping the road open so I could get the men through, and any of the men who wanted to get on the trucks, so they could go to work.

Q. Is that all you discussed with Mr. Johnson?

A. I think that is all I told him.

Q. When you said to Mr. Johnson that you would recognize the C.I.O. anytime they could prove it to you, did he thereupon offer to produce the cards?

A. No, not at this time.

Q. What did he state when you made that reply?

A. He just said they would not let us through unless I recognized the C.I.O. and I said——

Q. (Interrupting): Is that all he said?

A. Yes; and I said anytime he showed me that the C.I.O. had a majority, I would recognize them.

Q. Do you recall during the course of this hour on this particular day walking up and down the road by the bridge and stating that you would never recognize the C.I.O.?

A. No.

(Testimony of F. D. Robinson.)

Q. Following July the 11th, the next crew to resume work [194] was on July the 14th, wasn't it?

A. I think something like that, the 14th. [195]

Q. How long prior to July the 14th did you make the first request for the State Patrolmen?

A. I don't remember just how long before; it was after the first trouble.

Q. After July 11th? A. Yes.

Q. It was sometime between July 11th and July 14th? A. Yes, sir.

Q. Now, was there anyone else in attendance at the picket line on July 14th assisting you and your crew to go through the picket line other than the four State Patrolmen? A. No.

Q. You are sure of that? A. Yes.

Q. And you don't want to change your testimony about that in any respect?

A. No, I think that is all right.

Q. Now, during the strike, did the union continue seeking exclusive recognition?

A. I think so.

Q. Did the committee meet with you?

A. Yes. [209]

Q. When was the first meeting after the strike?

A. I don't know just what date it was.

Trial Examiner Hekton: When was the strike?

The Witness: I don't know that; I didn't know there was a strike until two weeks after I closed the camp, about the middle, or the 14th was the time when I knew there was a strike there.

(Testimony of F. D. Robinson.)

Trial Examiner Hekton: About how long after July 14th?

The Witness: Shortly afterwards.

Trial Examiner Hekton: Two days?

The Witness: Two or three days, I have the date.

Q. (Mr. Walker): There was a series of meetings, about four or five days, at the time, wasn't there? A. Yes, I think so.

Q. A meeting each day for a period of about five days?

A. I think so. They met in Mr. Hunt's office, and they met in my office.

Q. At the first meeting, there was a basis for the discussion for the settling of the dispute, was there? A. Yes.

Q. There was a settlement or agreement that the union withdraw the charges? A. Yes.

Q. As one of the proposals? A. Yes. [210]

Q. And the proposal contemplated a signed stipulation?

A. No, I don't think it was a signed stipulation.

Q. I don't mean that there was a stipulation which was ultimately signed, but one of the proposals was that whatever terms of settlement should be agreed upon, it should be embodied in it?

A. Yes.

Q. And one of the proposals was a provision for the reopening of the camp as soon as possible after July 5th? A. Yes, sir.

(Testimony of F. D. Robinson.)

Q. And there was a proposal provided for that there was to be a posting of notices; was that one of them?

A. I don't remember any proposal of that kind.

Q. Did the union agree to call off the strike as one of the proposals?

A. Yes, provided I put these men back to work.

Q. Was one of the proposals a provision for the recognition of the union as the exclusive representative for collective bargaining, upon proving that the union represented a majority of the workers?

A. Yes.

Q. There was a form of written stipulation embodying this provision presented to you, was there?

A. I think there was; I am not sure.

Q. Was such a written stipulation presented to you? [211]

A. I think so.

Q. It was never signed, was it?

A. No.

Q. Did someone sit in these meetings with you representing you?

A. Mr. Hunt was there.

Q. Mr. Hunt was advising you?

A. Yes.

Q. And he advised against signing the proposed written stipulation?

A. I don't think there was any written stipulation agreed upon.

Mr. Walker: That is correct.

Mr. Hunt: There was one other thing in here: I would like to have it stated as to the time and place where it says that I advised him as to the signing of such a stipulation. I want the time and

(Testimony of F. D. Robinson.)

place to be fixed. We had meetings, many a conference, and I ask Mr. Walker to fix the time when I advised him not to sign such a stipulation.

Q. (Mr. Walker, continuing): When was the first meeting with this committee?

A. I don't recall the date.

Q. On how many days did meetings with the committee continue?

A. I think we met three or four times during the period; three or four times. [212]

Q. Mr. Robinson, this is a 1939 calendar, and I will call your attention to the month of June: does it refresh your memory that you met with the committee on June 26, June 27, June 28, June 29?

A. It may be so; I don't remember just the dates on that.

Q. Now, the next proposal was to check the union cards against the June 5th payroll, was it?

A. Yes, sir.

Q. Did you agree to that? A. Yes, sir.

Q. It was provided if as a result of the checking of the cards and the union proved a majority, it would obtain exclusive recognition as the bargaining agency? A. Yes, sir.

Q. Did you agree to that? A. Yes, sir.

Q. Was a form of agreement drawn and presented?

A. Well, now, I don't think so.

Q. You do not recall a form of agreement being drawn and presented, which embodied a provision that if, as a result of the checking, the Union should

(Testimony of F. D. Robinson.)

have a majority, they would be the collective bargaining agency?

A. No, I don't remember that.

Q. Do you recall whether or not there was any provision defining who should be eligible as workers as of June 6th? [213]

Mr. Hunt: May I ask that the time be fixed, as we had many conferences at the time? I understand this line of questioning is on a different conference.

Mr. Walker: That is correct.

Mr. Hunt: If you will give the time, I will appreciate it. You are inquiring what took place at the conferences. Counsel knows what conferences he is speaking of.

Trial Examiner Hekton: Counsel has exhausted the witnesses's recollection as to dates; he is anxious to have them, and I would like to have them. The dates should be tied to the conferences.

Mr. Hunt: The date should be tied to the conferences in Mr. Robinson's office, and in my office.

Q. (Mr. Walker, continuing): Where was the first conference held?

A. I think in Mr. Hunt's office.

Trial Examiner Hekton: In Mr. Hunt's office?

The Witness: Yes.

Q. (Mr. Walker, continuing): Where was the second conference held?

(Testimony of F. D. Robinson.)

A. I think it was in Mr. Hunt's office.

Q. And where was the third conference held?

A. I don't know whether it was in my office; I think it was in Mr. Hunt's office.

Q. What is your recollection?

A. I think it was in Mr. Hunt's office. [214]

Q. Did you have a fourth conference?

A. I don't know; we had so many of them—I don't know whether three or four; I remember three, distinctly.

Q. And your recollection is that all three conferences, which you can now recall, were held in Mr. Hunt's office?

A. Yes. Please read the question.

(Last question read.)

Trial Examiner Hekton: Read it again.

(Question again read.)

A. No.

Q. Was there a proposal for a certified listing of those who were working as of June 6, 1939?

A. Some of those men went back to work.

Q. Was there a suggestion that either you or Mr. Davis prepare and produce a certified listing of employes who appeared on the June 6th payroll?

A. Yes.

Q. And was there a provision that the Union had to abide by the result of the auditing and should refrain from picketing and other forms of economic action?

A. Yes, sir.

(Testimony of F. D. Robinson.)

Q. And was there any other provision there, that upon its being proven it had a majority as the result of the audit, that the union should become the exclusive bargaining agency? A. Yes. [215]

Q. Did you agree to those proposals?

A. Yes.

Q. Was a document drawn up and presented embodying those proposals?

A. I don't think so.

Q. You did not sign the document which embodied any of those proposals? A. No.

Q. In the absence of entering into a written signed instrument, was any alternative proposal suggested for outlining those proposals?

A. Yes.

Q. That was a proposal or a suggestion that the proposals be embodied in a letter and letters exchanged between the parties; was that the idea?

A. No, I don't think that is it.

Q. Was there, during the course of those negotiations, a proposal that in lieu of a written document, the terms of the agreement be set out in a letter and letters exchanged between yourselves and the Union? A. No.

Q. Do you recall whether or not you ever received a letter from the Union embodying the terms which were orally discussed at this meeting?

A. I don't think so; I don't remember whether I did or not. [216]

Q. Did you ever prepare a letter which embodied the terms of that which you had orally agreed upon?

(Testimony of F. D. Robinson.)

A. No.

Mr. Walker: Please mark this as Board's exhibit 3 for identification; a letter of June 27, 1939, signed "Herbert Johnson".

(Whereupon, the document hereinabove referred to was marked as Board's Exhibit No. 3 for identification.)

Q. (Mr. Walker, continuing): Mr. Robinson, I hand you what is marked Board's exhibit No. 3 for identification, and ask you if you ever received a copy of the instrument marked Board's exhibit No. 3 for identification?

A. Yes, we had that agreement, but I don't remember receiving the letter. We talked that all over, but I do not remember whether I got the letter, or whether it is just in the office. It was agreed upon; most all of that was talked of.

Q. During this conference in Judge Hunt's office, the points which are set out in what is marked as Board's exhibit No. 3 for identification,—those items marked 1 to 5 were orally agreed upon by the parties?

A. Yes, sir.

Q. You say that you don't recall whether you received a copy of what is marked as Board's Exhibit No. 3 for identification, or whether it was received in the office or by Judge Hunt?

A. Just a minute, until I read this over (taking letter from [217] counsel).

Mr. Walker: All right.

A. Yes.

(Testimony of F. D. Robinson.)

Q. During this conference in Mr. Hunt's office, did the parties agree that the items orally agreed upon would be set out in letters and exchanged between the parties?

A. I don't remember whether it was agreed upon to be sent out in letters, or whether it was just an agreement.

Mr. Walker: Please mark this Board's exhibit No. 4 for identification; a letter dated Sandpoint, Idaho, June 27, 1939.

(Whereupon the document hereinabove referred to was marked as Board's exhibit No. 4 for identification.)

Q. (Mr. Walker, continuing): I hand you what is marked Board's exhibit No. 4 for identification, and ask you if that is your signature at the bottom of that letter? A. Yes.

Q. Mr. Robinson, was a copy of what has been marked as Board's exhibit No. 4 for identification served on the Union or on the representatives of the Union?

(Witness reads letter tendered by counsel as Exhibit No. 4 for identification.)

Trial Examiner Hekton: Have you read it?

The Witness: I don't think there was any sent out.

Trial Examiner Hekton: Read the question.

[217-A]

(Question read.)

The Witness: Not to my knowledge.

(Testimony of F. D. Robinson.)

(Whereupon, at this time, a short recess was taken, after which proceedings were resumed as follows:)

Q. (Mr. Walker, continuing): Did Mr. Johnson ever produce union cards for the purpose of checking?

A. Yes, in Mr. Hunt's office, he produced the cards, but would not let Mr. Hunt check them as to whether they had a majority or did not.

Q. Did he give a reason?

A. No. He picked up the cards that were being checked, without their being checked properly; he just picked them up.

Q. At that time, was there anything said which brought that about?

A. He produced the cards, and Mr. Hunt proceeded to check them, and remarked that they showed a man's name twice, and a card which showed a man did not pay his dues; and Mr. Johnson picked them up and put them in his pocket.

Q. Had Mr. Hunt made any request relative to the checking of the cards which brought about this reaction from Mr. Johnson? A. No.

Q. Did you produce a listing of the June 6 employees? A. I think I did, yes.

Q. Did Mr. Hunt ask to take the cards?

A. He had them on his desk, and was making a check against the [218] list of names on the payroll.

Q. Did Mr. Hunt say anything about taking

(Testimony of F. D. Robinson.)

the cards so he could check them with Mr. Davis against the payroll, and that he would reissue a receipt to Mr. Johnson?

A. They were checking them right there before Mr. Johnson.

Trial Examiner Hekton: Did Mr. Hunt say that?

The Witness: Not to me, no; not to my knowledge.

Q. (Mr. Walker, continuing): Did Mr. Hunt ask to make a list of the names on the cards?

A. I think he wanted to check them against the payroll and take a list of names on the cards.

Q. Did the Union agree to that?

A. I think that is when Mr. Johnson picked them up and put them in his pocket. I think the reason was that Mr. Hunt started to check and found one man had two cards in there, and that was the reason he wanted to list them as he went on, to my knowledge.

Q. I don't know whether you answered this or not. Did the Union agree with Mr. Hunt that he could make a list of the names on the cards?

A. No.

Q. Now, the next proposal was an election to be held upon agreed terms, was it? A. Yes.

Q. And the terms were that the camp should be open on [219] July 5, 1939, or as soon thereafter as possible, and that all the men would be re-employed whose names appeared on the June

(Testimony of F. D. Robinson.)

5th, 1939 payroll, before any new men were employed? A. Yes, I think that was so.

Q. That in the interim, between the time of the meeting and the election, no work should be done by anybody before July 5th except road repairs and machinery repairs ?

A. There wasn't anything done in that time.

Q. Was that one of the terms?

A. I don't think that was ever mentioned.

Q. Was there as one of the terms, that from the result of the election, if the Union won, they would obtain the exclusive bargaining agency, collective bargaining agency for all of the employes?

A. Yes.

Q. There was also the matter of the date when the election was to be held?

A. Well, we were in my office and we had a meeting there, and it was supposed to be put to a vote, put it up for a vote and let them vote on it as soon as I opened the camp; and it was all agreed upon, and I was to write a letter to Seattle to the Labor Board and put it to the vote; and I think on the 7th or 8th of July,—and it was all agreed upon,—and Mr. Hunt went back and Mr. Roll went back and fixed up this agreement later, in the office; and a few minutes after, Mr. Johnson came in and called [220] Mr. Roll out and they went out to the car and Mr. Johnson came back in a short while and said there would not be any election held in the camp unless the men voted the day after that,—on the 8th of July.

(Testimony of F. D. Robinson.)

Q. Who is Mr. Roll? An examiner for the Labor Board? A. Yes, sir.

Q. Did you walk over to Judge Hunt's office?

A. No, I stayed in my office.

Q. You stayed in your office? A. Yes, sir.

Q. How did you learn what happened in Mr. Hunt's office?

A. I came over later; I was in the office at the time, but I came in there later.

Q. Will you explain that again, please?

A. I was in there when Mr. Johnson was in there, and when Mr. Johnson went out of Mr. Hunt's office, I went over there.

Trial Examiner Hekton: Then you came over there?

The Witness: I was there when Mr. Johnson came in into Mr. Hunt's office, and when Mr. Johnson came in and Mr. Roll went out with him.

Q. (Mr. Walker): One of the matters to be determined was the date on which the election was to be held?

A. I think the 7th or 8th; when I got the men all back to work.

Q. And one of the matters was the time at which the polls were to be open, is that correct?

[221]

A. I think so, yes.

Q. One of the matters was the places at which the polls would be available to the voters?

A. I think one was in town, and one was in the camp; in case there was some of the men hadn't

(Testimony of F. D. Robinson.)

gone back to work, it was to be held downtown; also in the camp. They were going to hold it both places.

Q. Prior to the time the meeting left your office,—prior to the time the meeting broke up at your office when you were discussing a probable date for the election, was the union's position that it wanted an election as soon as possible?

A. Yes.

Q. It was your suggestion that the election be not held until after the reopening of the camp after July 5, 1939?

A. Yes, sir; because lots of the men had gone home, and after I had opened the camp, I would call them all in, and they would all be there for the election.

Q. It was finally agreed upon that the election would be held on July 6th?

A. I think that was the date.

Q. And then the Union withdrew?

A. Yes, I think so.

Q. Was there any proposal that the committee meet with you, without either Mr. Johnson or Mr. Hunt being present?

A. Yes. I met Mr. Johnson in my office. [222]

Q. Did the committee agree to that?

A. I think so.

Q. Did the committee ever call upon you in the absence of Mr. Hunt or Mr. Johnson?

A. No, I don't think so, only this one particular

(Testimony of F. D. Robinson.)

meeting in my office, when we met without Mr. Johnson, in my office.

Q. Then they did meet with you without Mr. Hunt or Mr. Johnson? A. Yes, sir.

Q. After that, did you learn whether or not the Union Committee subsequently did agree to hold election on July 6th?

A. It was agreed upon by Mr. Johnson.

Q. And the Union withdrew from that arrangement? A. Yes.

Q. After the withdrawal, did you ever learn whether or not the Union Committee subsequently or after they had determined on the revocation of their withdrawal, that it did agree to hold the election on July 6th?

A. I don't think they did; not to my knowledge.

Q. After the union had withdrawn from the arrangement to hold the meeting on July 6th, did you and Mr. Hunt ever talk over whether or not there was any possibility of again holding an election?

A. Yes, I think so.

Q. When? [223]

A. I don't remember the date. We had so many meetings, I could not say.

Q. Did you and Mr. Hunt ever discuss whether or not at any time after July 6th would be agreeable?

A. Yes, we were agreeable to any time. They wanted to have an election after that. We were willing to meet them.

Q. Did you learn whether or not at any time

(Testimony of F. D. Robinson.)

after the union had withdrawn from its agreement to hold the election on July 6th, they subsequently changed their mind, and did agree to hold the election on July 6th?

A. No, I don't think so.

Q. Was a storage pond built on Buried Creek in 1939?

A. I think it is Colburn Creek; I don't know whether it is Buried Creek or Colburn Creek; there was a storage tank built.

Q. When did the construction of that dam begin? A. I don't remember just the date.

Q. When was it first determined to construct the dam?

Mr. Hunt (Interrupting): May I ask a question?
Trial Examiner Hekton: Yes.

Mr. Hunt: Did you build that dam?

The Witness: Yes.

Q. (Mr. Walker): Prior to the time of the construction beginning on this pond, you had determined to build a pond, had you?

A. Prior to that? [224]

Q. Before the construction began?

A. Yes, sir.

Q. When did you determine to build the pond with respect to the time when construction work began?

A. I think it was in July or August; August or September; I don't remember which; I would have to refer to the records to get some of those dates.

Q. At the time of the construction of the dam

(Testimony of F. D. Robinson.)

being proposed, did you discuss the construction of the dam with Mr. Brown, Sr. at any time?

A. Yes, sir.

Q. Who determined its location?

A. The Long Lake Lumber Company.

Q. Was the location discussed with Mr. Brown, Sr. at any time?

A. The only thing they asked me was if I would build it for the Long Lake Lumber Company.

Q. Who determined when the construction was to start?

A. Mr. Brown.

Q. Who determined the type of dam to construct?

A. Mr. Brown.

Q. Who laid out the site?

A. Now, I don't know who laid the site out; I could not tell you that.

Q. It was not you? [225]

A. No.

Q. Who supervised the construction?

A. I did.

Q. Anybody else?

A. I had Mr. Breen helping me.

Q. And who directed the men in their work?

A. Why, Mr. Breen, when I wasn't there.

Q. When you were there, you did?

A. Yes, sir.

Q. Who engaged the men to work on the dam?

A. I did.

Q. Anyone else?

A. No.

Q. Now, after the dam was finally completed, was there any further construction at the ponds site?

Mr. Potts: I object to any further inquiries in

(Testimony of F. D. Robinson.)

this matter. There is no connection whatever with the controversy involved in this case. It is entirely separate and distinct, an arrangement which has no connection, and is not shown to have any connection with the Caribou Logging operations over which the trouble arose; and I don't think he will contend it has.

Mr. Walker: Let me ask a few questions relative to that objection.

Q. (Mr. Walker, continuing): Did you store logs in that pond? A. Yes. [226]

Q. Where did the logs come from?

A. The Caribou Basin.

Mr. Potts: That would not change the situation any. May I ask a question or two?

Trial Examiner Hekton: With counsel's permission.

Mr. Walker: I am agreeable.

Mr. Potts: This examination has been directed to the construction of a dam at Colburn Creek?

The Witness: Yes, sir.

Mr. Potts: When was that constructed, or commenced?

The Witness: In August or September, I think.

Mr. Potts: Of what year?

The Witness: 1939.

Mr. Potts: August or September, 1939?

The Witness: Yes, sir.

Mr. Potts: Did the Long Lake Lumber Company enter into some arrangement with you for the construction of that dam?

(Testimony of F. D. Robinson.)

The Witness: Yes, sir.

Mr. Potts: What was that arrangement?

The Witness: I was supposed to build the dam, and they were supposed to reimburse me, pay me so much for my equipment and for my labor so much.

Mr. Potts: And the purpose was to create a storage basin for holding logs?

The Witness: Yes, sir; for holding logs. [227]

Mr. Potts: And it was designed to be used to hold logs purchased from other operations contemplated by the Long Lake Lumber Company?

The Witness: Yes.

Mr. Potts: And the Winton Lumber Company?

The Witness: Yes, sir.

Mr. Potts: And it was entirely separate and distinct from your contract covering the Humbird Lumber operation,—the Caribou Logging operation, wasn't it?

The Witness: Yes, sir.

Mr. Walker: That is objected to on the ground it is going beyond the announced purpose of counsel's inquiry.

Mr. Potts: I don't think it is. We want to show it was an entirely independent matter and had nothing to do with the Caribou Basin controversy and this was a separate contract that Mr. Robinson had, to create a storage basin to handle logs from other operations,—logs produced by the Long Lake Lumber Company and logs produced in territory they had, and logs of the Winton Logging Company.

(Testimony of F. D. Robinson.)

Trial Examiner Hekton: And also logs produced in the Caribou Basin.

Mr. Potts: And also logs produced in the Caribou Basin, but it had nothing to do with the logging production or operation involved in this proceeding; it is an entirely different and separate and definite matter. [228]

Trial Examiner Hekton: I don't know; because I have not heard yet the end of the inquiry. Supposing we note your objection and on his failure to connect it up with the proper inquiry here, it will be stricken?

Mr. Potts: Very well, I will make that objection to all this testimony, as irrelevant, that is to the construction at the Colburn Creek storage basin. It is irrelevant and immaterial and has no connection with the controversy involved in this proceeding, or the logging operations conducted by Mr. Robinson, out of which this controversy arose, and I ask that the objection go to all the testimony sought to be elicited in this connection, and then to have the privilege of moving to strike out the entire testimony, if it is proven it is irrelevant.

Trial Examiner Hekton: That is what I intend to do with it.

Q. (Mr. Walker, continuing) In your arrangement with the Long Lake Logging Company, you are paid so much a thousand for logs on board cars, is that correct? A. Yes, sir.

Q. With truck landings built at the damsite?

(Testimony of F. D. Robinson.)

A. Yes, sir.

Q. How many were built?

A. Oh, I would say 10 or 15.

Q. Who selected the sites for the truck landings?
A. I did. [229]

Q. Who directed the construction of the landings?
A. I did.

Q. Anyone else? A. No.

Q. Who directed the men in the construction of the landings?

A. Mr. Breen was there when I wasn't there, and I told him to,—or gave him instructions to do certain things, and he would tell the men.

Q. After the dam was completed, did it go out?

A. Yes, sir.

Q. When that happened, did you discuss the matter with Mr. Brown, Sr.? A. Yes, sir.

Q. And he directed that the affected parts be reconstructed? A. Reconstructed.

Q. And it was reconstructed? A. Yes, sir.

Q. Have you ever entered into an agreement with the employes relating to the hours of employment, wages and working conditions?

A. Yes, I think that I have talked with them lots of times about it.

Q. I don't think you understood the question. Please read the question.

(Last question read.)

A. No. [230]

Q. Has any labor organization other than Lo-

(Testimony of F. D. Robinson.)

cal 119 of the IWA, commonly called the CIO, requested to bargain for the Caribou crew?

A. No.

Q. Where did you say that you first learned that the Caribou Camp was being organized?

A. I didn't know it until this meeting.

Q. And after learning about it, did you talk to anyone on that subject? A. No.

Q. When you first learned that the camp was being organized, you contacted Mr. Brown, Sr., didn't you? A. No.

Q. On the day of June 5th, did you talk to Mr. Brown, Sr. on your discovery of the organizational work? A. No.

Q. Did you talk to Mr. Brown, Sr. until that day, at all? A. Not to my knowledge on that.

Q. Did this matter of organizational work come to you as a surprise at that time? A. Yes.

Q. Prior to that, you had had no knowledge of organizational work whatsoever? A. No.

Q. But that left a distinct impression upon you, that surprise, [231] did it? A. Yes, sir.

Q. On the day of June the 5th, did you talk to any officer of the Long Lake Lumber Company about the matter of your discovery of the organizational work? A. No.

Q. Did you talk to any officer of the Long Lake Lumber Company on June 5th about anything?

A. I don't remember talking to any of them. There wasn't any of them in camp.

Q. In camp?

(Testimony of F. D. Robinson.)

A. I talked on the line of this labor movement.

Q. Will you refer to the calendar to refresh your memory? A. Yes.

Q. Was Mr. Brown, Jr. in camp that day?

A. He was in that night, yes; I am not sure whether it was that night or not; I don't know whether he was there both days, or on the 6th; he was there two or three times during that week and I don't recall. He was there the night the trouble came up, I know.

Q. Did you have a telephone conversation with any of the officers of the Long Lake Lumber Company on Monday, June the 6th, 1939?

Mr. Potts: Monday was not June the 6th.

Mr. Walker: I am sorry; June 5th. [232]

A. No, I don't remember; I might have called and talked to them; I called in once in a while about the weather, or whether they were going to get logs; that is the main thing. I think as to the weather, that it was raining, and I might have talked to him.

Q. You mean to Mr. Brown, Sr.?

A. Yes, if I called; but I don't remember calling that day.

Q. If you had called that day, would it have been to the Spokane office?

A. Yes, sir; I think so.

Q. That is your usual practice?

A. Yes, sir.

Q. You would not have occasion to call Mr.

(Testimony of F. D. Robinson.)

Brown away from any other place than at the Spokane office? A. No.

Q. If Mr. Brown would be away from the Spokane office, would he leave word with you where he would be?

A. Yes, lots of times; lots of times he would be at Hayden Lake; his home is there in the summertime.

Q. Do you recall whether you talked to Mr. Brown, Sr. at Hayden Lake on Monday, June 5, 1939?

A. I don't remember whether I called him there or not. I called him there several times at that place; I don't know that I called him that particular day, whether or not.

Q. Did you have a telephone conversation with Mr. Brown, Sr. [233] on Sunday, June 4, 1939?

A. I don't think so; I don't believe so; I might have.

Q. Did you have any telephone conversation with Mr. Brown, Sr. on Tuesday, June 6th, 1939?

A. I would not remember the dates.

Q. Will you refer to the calendar?

A. That would not do me any good on this. I don't remember. I might have, for I was calling all the time, here and there, but I don't remember whether I called on June 6th, the 5th or the 8th; I don't remember the dates when I was calling; I might have talked to him on those dates.

Q. At none of those times at which you could have contacted with him did the subject matter

(Testimony of F. D. Robinson.)

concerning the union or organizational work come up? A. No.

Q. And that is true as to any difficulties on Tuesday, June 6th, 1939, whether it was before or when you learned that organizational work was in existence at the camp, or whether it was after you learned that that happened?

A. I don't know whether I called in that day. If I did, I would not know.

Q. At least, you have no recollection of having talked with Mr. Brown, Sr. on the evening of the 6th of June, 1939, after having learned there was an organization in existence at the camp?

A. No. [234]

Q. Who were the four or five who remained on your payroll straight through from May until October?

(Witness pauses for some time.)

Q. There was yourself? A. Yes, sir.

Q. And Mr. Davis?

A. You mean on the payroll?

Q. Yes.

A. I wasn't on the payroll. There was Davis, and Critchel and Al Hendrickson. [240]

Q. And Vic Norman?

A. I think he was on; I don't know whether there is any more or not.

Q. Mr. Davis is your timekeeper?

A. Yes.

Q. And Mr. Critchel your mechanic?

(Testimony of F. D. Robinson.)

A. Yes, sir.

Q. And Al Hendrickson is the bull cook?

A. The bull cook.

Q. What does Victor Norman do?

A. He was a kind of roustabout; he did a little bit of everything around there, helping the mechanic, or anything which he was available for; he simply did odd jobs that I had around there for him to do.

Q. And there was Jack Bopp?

A. Yes, I think it was.

Q. And he is the assistant timekeeper?

A. You have that better than I have; I had forgotten him.

Q. Mr. Bopp and Mr. Davis are paid by the month?

A. Yes, sir.

Q. Both of them?

A. Yes, sir.

Q. And Mr. Critchel was paid by the month?

A. No.

Q. Do I understand you to say that you could not haul logs on June 5th? [241]

A. Yes.

Q. Were any logs hauled on June 5?

A. No, I don't think so, unless there may have been some on the main road; there might have been one place where they were right on the main road; they might have hauled a few loads; they were gypoing. That was the only place there was a chance to get out at all.

Q. Were any logs hauled from Mr. Jim Morrow's camp on June 5th?

(Testimony of F. D. Robinson.)

A. He may have had one or two loads; I don't know whether he did.

Q. You stated, Mr. Robinson, that on July 6th you could not go back to work because the men would not let you, and it was raining pretty hard. Which was the cause?

A. I think it was on account of the rain.

Q. That was the only reason?

A. I think it was; June 6th, when I hired these men. Was it? I had them hired before, I think, on June 6th.

Trial Examiner Hekton: Are you talking about June or July?

The Witness: June.

(Last question read.)

Mr. Hunt: The question was July.

The Witness: The men would not go back to work on June 6th.

Trial Examiner Hekton: July.

Mr. Hunt: July. [242]

A. July 6th; I have gotten myself mixed up.

Q. (Mr. Walker) That is the reason work was not resumed on July 6th?

A. I think that was the reason.

Q. That is the only one?

A. And then the weather; it was raining, and it would not let us haul; the truck drivers could not haul.

Q. Which was it?

A. It was the rain, mostly.

Mr. Walker: That is all.

(Witness excused.)

LEON M. WISE,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker) Your name is Leon Wise?

A. Yes.

Q. Where do you reside?

A. Pack River.

Q. What is your occupation?

A. Logger.

Q. Where have you done logging?

A. How many years, or where?

Q. Where?

A. I logged at Caribou Basin for Frank Robinson. [243]

Q. In the fall of 1938, you did resume your employment there at Caribou, did you?

A. Yes, I did.

Q. And were driving truck again?

A. Yes.

Q. And after you resumed work at Caribou, that fall, did you see James Brown, Jr. around there? A. Yes.

Q. Did you have any talk with him?

A. Yes.

Q. Was there any time when you had any trouble with your truck on the road that fall?

A. Yes, there was one time we were up at Clyde Smith's [247] jammer.

Q. What happened?

(Testimony of Leon M. Wise.)

Trial Examiner Hekton: What happened out there?

A. There were not any turnarounds in the road; it was a long ways back for that jammer, and I attempted to turn around where there wasn't any turnaround, and backed over a log and I wasn't feeling so good about it. Jimmie came up, and they had a team up there, trying to get me out.

Q. When you say "Jimmie", whom do you mean?

A. I mean James Brown, Jr.; and I told him what I thought of having no turnaround, and Jimmie said, "I will see they come up here and put in some turnarounds in this particular stretch of the road." [248]

Q. Do you know Kenneth Critchel?

A. Yes, sir.

Q. Did you have a conversation with him in the fall of 1938?

A. Yes, quite a few.

Q. And at any of the times was Mr. Brown, Sr. present?

A. I would not say that he was present while I was talking to Critchel,—well, he saw Critchel was doing some work on the truck for me down there when Mr. Brown, Sr. and Mr. Robinson came down, and I was talking to Critchel at the time he was working for me, when Mr. Brown, Sr. engaged him in conversation.

Q. What was the conversation?

A. I was more interested in the truck than

(Testimony of Leon M. Wise.)

in the conversation and in getting it out of there. I do not know that I can recall it word for word; but he asked Mr. Critchel if he could build a jammer that could work 8 hours without breaking [250] down. As I recollect, Mr. Critchel said he could, and started to go into details about where he knew he could pick up a second-hand motor and stuff like that. And Mr. Brown told him,—he said, “We don’t want any more of that second-hand junk around here. We want a real outfit,” or words to that effect.

Q. Did Mr. Critchel say anything to him then?

A. He said if they gave him something to work with, he could build the stuff.

Q. Did Mr. Brown, Sr. then continue the conversation?

A. I don’t remember any more of the conversation; they were down there quite a while.

Q. Did Mr. Robinson take part in that conversation?

A. I never heard him say a word.

Q. During the 1939 season, was any new jammers put into operation in that camp?

A. Yes.

Q. And what kind were they?

A. The one at the camp the last year that I was ever there was the first which was brought there that year; that was early in 1939, and that was a caterpillar, a gas caterpillar, double drum winch; and later the next new one I saw was an “Alpheus Sperry” truck from Spokane unloaded

(Testimony of Leon M. Wise.)

at the bridge and it was a caterpillar; I believe it was a 40.

Q. The one with the double drum winch, which was delivered [251] earlier in the season,—was anything done to it after it was delivered at the camp? A. Yes, sir.

Q. And Mr. Critchel was building the boom and the rigging for it? A. Yes.

Q. He built the boom and rigging to this cat?

A. Yes.

Q. When did you last work in the 1938 season?

A. I don't recall just when; the camp shut down; I believe it was somewhere around possibly, maybe, a few days along in November. I hauled the last of the equipment out of there which came out that year.

Q. How did you happen to do that?

A. Mr. Robinson asked me if I would haul this coming December down to Sandpoint; they were always bringing them in to repair and overhaul.

Q. Prior to the time when you did the hauling, had you seen Mr. Brown, Jr. around the camp?

A. Yes.

Q. You had?

A. Yes, I saw Mr. Brown just before the camp shut down.

Q. Where did you see him at that time?

A. I was coming down with a load of logs and met him down about three or four miles below camp; not that far,—it was [252] two miles below

(Testimony of Leon M. Wise.)

camp, and he stopped and talked with me a minute.

Q. Did you have a conversation with him?

A. Yes.

Q. What was it?

A. It was raining, and stormy at the time, and James told me it would be the last load to come up; he was shutting the camp down and it would not operate the next day; and it did not.

Q. Did the camp shut down the next day?

A. Yes.

Q. When did you start to work in '39, do you recall?

A. It was along the latter part of May.

Q. And what work did you do in '39?

A. I was hauling logs.

Q. Did you do any hauling in the 1939 season?

A. Yes.

Q. When was the last day you worked in the 1939 season?

A. I believe it was the third of June. I may have worked on Sunday, the 4th, but I don't recollect; but it was the third,—the third or fourth of June. I could get the time from home.

Q. Do you remember the incident of the camp closing in 1939?

A. Yes.

Q. Are you a member of any Labor Council?

A. Yes.

Q. What? [253]

A. Local 119, IWA.

Q. Had you ever attended any meeting of that Council prior to the camp being closed down?

(Testimony of Leon M. Wise.)

A. Yes, sir.

Q. When was that meeting with respect to the time the camp closed?

A. We held the meeting one evening, and the camp closed the next day, the next morning.

Q. Were you at the camp at any time on June 5th?

A. Yes.

Q. What time did you go to the camp that day?

A. I got up there about 7 o'clock, about time to go to work.

Q. Did you see anybody when you got there?

A. Yes.

Q. Who?

A. I saw Mr. Robinson; Gregg Moore and his crew were around there; Emery Hunt, Neil Mardis; quite a crew was around there.

Q. How did you happen to see Emery Hunt and Neil Mardis?

A. I was talking to them then, and had been for quite a little while; they were going out sawing that morning.

Q. Did they go to sawing?

A. Yes, sir.

Q. Did they come with anyone?

A. Yes.

Q. Who? [254]

A. Frank Robinson took them in his pick-up.

Q. Did you see Mr. Robinson after he was there, or had been there with Mr. Morris and Hunt?

A. Yes.

Q. After he had come back from where he had

(Testimony of Leon M. Wise.)

been with Mr. Hunt and the other, what happened?

A. As he left, I asked him about logs, and he said, "I don't know yet exactly where the jammer is working. I want to get these saws started over there. I will be back in just a few minutes, and I will find out where you can haul today." He came back with his pick-up, got out of the pick-up, never stopped, and went on into the office; and he was in the office about five minutes, then walked to the door and called me in.

Q. About what time of day was this?

A. I imagine at that time, it was about 8 o'clock in the morning.

Q. Did you go into the office?

A. Yes, sir.

Q. Who was in there?

A. Frank Robinson and Mr. Davis.

Q. Did you have a conversation with them?

A. Yes.

Q. What was it?

A. Well, when I went in, Frank turned around to lock the door.

Q. He did what?

A. He turned around and locked the door, and put the key in [255] his pocket, and said, "Wise, I understand you are organizing for the CIO in this camp, and I understand you passed out four or five cards to men in this camp. Now," he said, "if you have, I want to fire you and every damned man you

(Testimony of Leon M. Wise.)

gave a card to. And if there is another fellow working with you here, I want to get him, too."

"Well," I told him, "I am a paid organizer, but I am not organizing in your camp," and I hadn't been; but I said, "If the fact that I have signed a card is going to get me fired, you might as well fire them all, because, as far as I know, the camp is organized 100 per cent."

And he didn't take that very well. He said, "Well, I will just shut the camp down; that is all there is to it." I tried to argue with him; he was pretty mad, and I explained to him, it hadn't got anybody hurt yet, or anything like that, and I figured it would come out all right, and he gave me quite a lecture as to what a sucker I was, and said that after J. L. Lewis got a couple of more millions, why, I would find out.

Q. Was that the lecture?

A. That was part of it, and Mr. Davis came in with something about some logging employes on the Coast where they had joined up and they shut down and were out of work and always would be as far as that particular operation was concerned, 2500 men; and Mr. Robinson gave some illustration down on the,—on some River where the "Wobblies" had struck and they were [256] asking a couple of dollars a day more, and they didn't know what they were striking for, and they finally broke them and they came back for a dollar a day less.

Q. Was there anything further?

A. Yes, there was quite a conversation. I was

(Testimony of Leon M. Wise.)

in there quite a while. I asked Frank, I told him, if he hadn't always set himself up as being a fair, square man, and he said, "yes", that he was always fair and square. And I asked him, would he think it was fair and square to shut the camp down where the men organized and never made a demand on him yet.

"The demands," he said, "will come later, and I cannot operate with that kind of organization at all." And we were arguing about that, and he said, finally, he would not shut the camp down, that they would monkey along, and he didn't care so long as they took out 10,000 feet a day.

Q. Did you ask him who the other fellow was?

A. Yes.

Q. Did you find out?

A. No; they said they knew who he was, out on the job, and they would get him when he came in.

Q. Had you been signing up workers at the Caribou prior to this time?

A. Not in the camp.

Q. Had you been signing some of the men up who worked at Caribou?

A. Yes, I had signed a few. [257]

Q. Prior to this date? A. Yes.

Q. Now, what did you do the next day?

A. The next day? I arranged the whole meeting to organize that camp the next night—for that evening.

Q. Did you make those arrangements?

A. Yes.

(Testimony of Leon M. Wise.)

Q. Who did you make them with?

A. Herbert Johnson.

Q. Did you do any hauling on June 6th, do you recall?

A. No; and the last thing, when I left the office, I asked Mr. Robinson if I was fired, and he said "No; come back in the morning," and I came back the next morning to see if I could haul that day; that was June 6th.

Q. Then what happened while you were there?

A. While I was there; that was when he fired that jammer crew.

Q. Who were they?

A. It was Gregg Moore, Ted Early, Ralph Peterson, and Bill Henry. That was what decided me to make arrangements with Johnson and organize the camp at once.

Q. After you had conferred with Mr. Johnson, what did you do?

A. I went back to the camp and told the men I knew would be on all the different operations that day, there would be a meeting called in camp that evening. [258]

Q. And about what time of day was this, when you were making the notifications?

A. I believe it was about ten o'clock in the morning.

Q. And did you talk to some of the employees?

A. Yes, sir.

Q. You told them that, did you?

A. Yes, sir.

(Testimony of Leon M. Wise.)

Q. During that time, did you see Mr. Robinson?

A. Yes.

Q. Where was that?

A. He was coming down the hill, as I was going up. I was talking with Joe Debrobec when Mr. Robinson came down.

Q. After this time, when you were in camp in the morning, did you go back later in the day to the camp? A. Yes.

Q. When was that?

A. It was along, I imagine, about five o'clock in the evening.

Q. Was there anyone with you? A. Yes.

Q. Who?

A. I went out with Harry Forger.

Q. Anyone else? A. No.

Q. When you arrived there, did you see anyone?

A. When I arrived there, there wasn't anyone in sight. [259]

Q. What did you do then?

A. I went on down and around to the first bunk house, the lower bunk house, and quite a bunch of men were congregated in there.

Q. Then what?

A. I sat down and talked with these fellows, and they kept on coming in, and it was getting to be almost meeting time so I started to walk around and make the other bunk houses, and just as I walked out of this bunk house and started down to the other bunk houses, Mr. Robinson drove up in

(Testimony of Leon M. Wise.)

his car and stopped in front of his house, and stopped my going into this bunk house, and when I went in, there was no one in there but Samuel Horder, some man building a fire, and I had got no more than speaking to Horder, when Mr. Robinson came in.

Q. And then what?

A. He said, "Boys, I understand you are holding a meeting in this camp. There will be no God damned meeting held in this camp tonight, or any other time." He said, "This is my camp, it belongs to me, and I own it. I want you to get out and get off of it."

I said, "Then you want to go on record as telling me to get out of this camp?" He said, "Yes, I do." He said, "Why don't you hire a union hall somewhere? This is no union hall. Why do you want to pick on me; why don't you organize with Mr. Johnson at the Diamond?" I could not get a word in edge- [260] wise, so I shut up; and Frank walked out and walked back over and stood by his car, and I walked over to where he was and tried to cool him off. I told him that he was making it worse for himself; everytime he got mad and blew up, he was putting his foot in it; that he saw how things were turning out, and he should not do so much holering until he was hurt. Here the men stayed in camp who had no home. He seemed to be very much provoked because his permission was not asked for the holding of the meeting. I apologized for that, for not asking his permission, and said I supposed

(Testimony of Leon M. Wise.)

it should have been done, but that it was an oversight. I apologized for that, and he said, "Go ahead and hold your meeting", and I told him that "Mr. Johnson or our organizer will be here in a few minutes, and will you talk to him?" And he said, "Yes." I figured that maybe Frank figured on getting into his car and going downtown, and wanted to talk to him, and I said, "We figured on holding the meeting and electing a committee to settle a few grievances; will you wait until the meeting is over and talk to us?" And he said, "Yes, I will wait on you and talk to you."

Q. Was there anything said between you and Mr. Robinson at that time, or between Mr. Robinson and Mr. Johnson?

A. Mr. Johnson hadn't arrived. He arrived about that time, and Gregg Moore and Mr. Johnson, I believe, drove up. I called to Mr. Johnson and Gregg went on, and I suggested that [261] Mr. Robinson and Mr. Johnson shake hands, and I and Mr. Johnson explained what we were going to do; that we were going to hold a meeting and we would like to have him meet the committee after the meeting, and asked Frank would he be there, and Mr. Robinson said "Yes, I will be here and talk to the committee; and Mr. James Brown, Jr. will also be here and talk to you."

Mr. Johnson said, "Who is that?" I guess it was the first time he had ever heard of James Brown, Jr. Frank said,—I forget James' title; he said, "His father owns all this stuff here," naming his

(Testimony of Leon M. Wise.)

title; and Mr. Johnson said, "That will be fine. We will be glad to talk to him." And I elaborated a little more on who James Brown was, and told Mr. Johnson.

Q. Was the meeting held then? A. Yes.

Q. And what was done at the meeting?

A. Well, we elected the committee to represent the men.

Q. And who were the individuals who were elected on the committee?

A. Gregg Moore, Clyde Smith, Boyd Stevens, myself, and Harry Courser.

Q. What did the committee do then?

A. We drew up our demands, everyone decided it was what they wanted, and it was all satisfactory with Mr. Johnson, and the committee called on Mr. Robinson with Mr. Johnson in the office. [262]

Q. What was said by the committee to Mr. Robinson? What first took place?

A. Mr. Johnson asked Mr. Robinson if he recognized these men as a committee of the IWA, Local 119, this committee representing the majority in his camp, and Mr. Robinson said, "Well, what else can I do? They are all there."

Q. Then what?

A. Then Mr. Johnson presented these demands which we had drawn up down there.

Q. What were they?

A. If I can remember in the order they came, I believe I know the first was the reinstatement of the jammer crew.

(Testimony of Leon M. Wise.)

Q. What was said in that regard?

A. There was some argument about that, Mr. Robinson claiming that they had not been fired, or laid off at all; that they were repairing the jammer; and we finally got down to where it was stated it would be a little better than two or three days when they would be back, Mr. Robinson agreeing finally to that point.

I believe the second point was added which was for the rehiring of all the men who had been on the payroll the year before, before any new men were hired.

Q. What was said in that regard?

A. There was a little argument there which, by the way it read, as a man's turn came, we wanted him back on, regardless. As Mr. Robinson explained it, he said maybe a man who was next in line was a jammer operator, and he would not agree to handle [263] brush. Well, it was finally fixed so if a man was capable and cared to take the next job in line, or wait until such suitable work came up for him.

Q. What was it that you were speaking about when you said "by the way it read"; what were you referring to?

A. The way this was written down, the way that Mr. Johnson read it off. It stated there was no argument about it, the men would be put back and would be rehired, as they had been the year before in rotation as their turn came before new men were hired.

(Testimony of Leon M. Wise.)

Q. In other words, demands which the committee agreed to present to Mr. Robinson had been reduced to writing, or the notes concerning them, or something like that? A. Yes, sir.

Q. Go ahead.

A. There wasn't any argument on that, I recall that. Mr. Robinson appealed to Greg Moore to bear him out in that, and Mr. Greg Moore said he figured it was all right. He did not agree he would pile brush if the jammer was coming up in a day or two; but if a man was capable of doing the work, he would not expect him to put somebody on who didn't know how to do the operation.

It was finally settled, and we all agreed to that.

Q. What was next discussed?

A. I believe the next was the rehiring of all cedarmakers. [264]

Q. What was said in that regard?

A. Well, we had quite an argument about that.

Q. What was it?

A. The demand we made was about the rehiring of cedarmakers; and Mr. Robinson went on to explain where some of these fellows he hired for that particular job,—it is a kind of a job by itself,—a cedarmaker and a logger,—there is somewhat of a distinction between them,—between the cedarmaker and the logger. That is the way Mr. Robinson explained it.

Q. When you say that Mr. Robinson said that, that he hired them for that particular job, do you

(Testimony of Leon M. Wise.)

mean such men had been hired especially for cedar work?

A. Not all of them; he was just explaining why it read "re-hire all cedarmakers"; the way he explained it was there were some men who had not worked for him the year before, and he had hired them just for that express job, and that spring they had been laid off before the main camp opened up.

Q. Was anyone mentioned in that regard?

A. Yes, I believe he brought up the name of Lons Axle.

Q. What was said about him?

A. He gave him as an instance of a cedarman, and that was all he ever did for him; and when there was no cedar, he laid him off; and we boiled that down to Amon Garvin and Cliff Joseph; and after that was fully explained, it looked to me like the rehiring of all men on the last year's payroll would [265] cover them men.

As I recall it, Mr. Robinson said this: that was what he meant this morning, "Those men who made cedar for me last year, I intend to give them the job all the time. It looks like that covers their demands, too." That was all of that.

The next demand on the line-up was the hiring of local help, and Frank said, "I have always hired local help," and we got into quite an argument on that on different instances and times, and one thing and another, but we finally came to the agreement, and he told us lots of times when he needed men there might not be any local men, and we said then

(Testimony of Leon M. Wise.)

we didn't care where he got his men, so long as the men who had laid around here 7 or 8 months for a job, after they had got their job, we didn't care where he got his other men, and we agreed on that, and the rest of the stuff was brought up and all related to camp conditions. I believe the first was the demand for a bull cook, and I would say he assured us, I believe, he had cook crews then at the cookhouse, and he certainly was going to put on a bull cook, and that was all right. That is all we asked for.

And then they asked for clean bed blankets, and he told us that they had been overlooked, and it was due to the fact that he had had no bull cook; that we could tell the boys the bed blankets would be there, and they could change them in time, that it had been an oversight, and hereafter, it would be [266] taken care of, and then they asked that the shower be connected up; and then there was the same routine, they had not gotten around to it, not in the rush of opening up the camp; and the same applied to the leaky roofs, and as to the electric plant, the lights were not working, but they were going to get the lights fixed immediately.

Q. Was that the end of the committee meeting?

A. I believe,—I know, Mr. Johnson shook hands with him and told him, he said, "Mr. Robinson, you have an organized camp. We have got lots of them. We will get along fine. I am assured we will get along fine hereafter."

And Mr. Robinson said, "Yes, I think so; I hope

(Testimony of Leon M. Wise.)

so.” And that kind of talk took me by surprise. I said, “Just what in hell did you jump over me for yesterday morning, if you didn’t have anything against the Union, and are just as well satisfied as not?”

“Well,” he said, “I was just trying to get a little information; I am trying to find out how things are going on around the camp here,” and Mr. Johnson said to him, “Don’t ever do it again. As far as union activities are concerned, that is none of your business. Don’t question a man on his union activities again.” And Frank said he didn’t think it would harm anything, and he said, “Don’t do it again.”

Q. Is that all that occurred at the office?

A. That is all.

Q. What did you do then?

A. We went back down and made out a report to the membership. [267]

Trial Examiner Hekton: This is the same night?

The Witness: Yes; understand, the members are all still in the bunkhouse, waiting for the committee to report back after we had the meeting with Mr. Robinson.

Q. (Mr. Walker) So the committee went back to the bunk house? A. Yes, sir.

Q. Did the committee render its report to the membership?

A. We reported just exactly the way, or almost exactly the way I have told you. We had a few slight changes made in the original demands, and

(Testimony of Leon M. Wise.)

it was reported to them, and it was all right, and the meeting was dismissed.

Q. After the meeting was over, what did you do?

A. After the meeting was over, there was a messenger, I forget who he was, but he came down and Vic Norman was at the bunkhouse, requesting he come up and sign him up, and I went up to the bunkhouse; it was Sid Moody came after me, and he came and said that Vic Norman was up there. I asked why he hadn't come to the meeting, and he said he was rather backward and shy, or something; so I went up to the bunkhouse and signed him up. Harry Courser was in a hurry to go home, and I told him to go on, and I would ride on back down with Sid Moody, and Ernie Berger.

Q. Did you see Mr. Brown, Jr. at all that evening?

A. I was going to ride back down in Sid Moody's car. Ernie Berger was with me. I wanted to stay at the camp on the way [268] down, and Mr. Johnson had gone over to the cook house. I went up and got into Moody's car by the powerhouse.

Mr. Potts: The question was, did you see Mr. Brown, Jr. that evening?

A. Yes.

Mr. Potts: What occurred?

A. I got in the car by the powerhouse and Frank was standing right in front of the office, and Moody said, "I wonder if you will haul tomorrow?" I said, "I will ask him." Moody stopped exactly opposite Frank, right opposite him; just then James

(Testimony of Leon M. Wise.)

Brown, Jr. came turning up. I just had asked Frank if we should haul tomorrow, and Frank didn't even answer me.

Mr. Hunt: What hour of the day did you meet Mr. Brown?

The Witness: It was just about dusk.

Mr. Hunt: This was after the meeting?

The Witness: Yes. Frank just turned around, and James was rather agitation, and he walked up to Frank and Frank said to him, "Where in hell have you been?" And we drove on, and that is the last I heard of that conversation.

Mr. Potts: It wasn't very much after we finally got it.

Trial Examiner Hekton: Is this a good stopping place?

Q. (Mr. Walker, continuing) Was there anything else which occurred that day, on June 6th?

A. Not that I recall now. [269]

Q. Did you go to camp on June 7th?

A. No.

Q. What did you do that day?

A. I was home that morning and the men were going to town and they stopped in and quite a few of them told me what had happened at camp.

Q. Did you go to Sand Point at any time that day? A. Yes.

Q. And about when during the course of the day?

A. I came into Sand Point about ten o'clock in the morning.

(Testimony of Leon M. Wise.)

Trial Examiner Hektoen: Tell us what you did then tell Davis and Robinson.

The Witness: I am going to answer the question and I have to do it in the order, and show why I answered Jimmie Brown like I did. Frank told me in the office he was under contract for \$10,000 and when Jimmie told me they were going to take Frank to Montana, I said, "What are you going to do with Frank's contract; you cannot do with him like you do with the rest of them; if he has a contract." And Jimmie said, "He has no contract more than you have; he is just a gypo owner;" he stated he knew his set-up as a bluffer; and whatever he does as to his work, they were not responsible. I said, "You are not responsible?" He said, "No; we are not even incorporated in the State of Washington."

Q. He said what?

A. He said, "Do you realize we are not even incorporated as a company in the State of Washington."

Q. Did you say anything to that?

A. I did go on further and told him—I had forgotten part of that starting in. I said that this lockout won't affect him so far as bringing men across the State line to fill our [278] jobs; but that everyone was ready to go back to work and the strike would be automatically lifted.

Q. Did he say anything then? A. Yes.

Q. What was it?

A. I said—"do you know"—It is hard for

(Testimony of Leon M. Wise.)

me to remember back that far; to get it like it took place. I am getting a little ahead of myself.

Q. I don't care whether you tell us one, two, three, but I want to know whether you have told all the conversation.

A. No; and I cannot tell it one, two, three. I can remember most of the conversation but I cannot remember the order in which it came while this was going on. Him and I finally wound up in the Eagle Pool Hall. I believe the next thing Jimmie told me was that it was all right for you fellows to organize. "You could have got together here and formed a Union of your own and we would have helped you." And he said, "Our mill is organized, you could have got together here and formed a Union of your own and we would have helped you," and he said, "We get along fine with the men in the mill and never have any trouble and we could have got along the same here, but you fellows didn't realize the kind of organization you have joined; you could not have done any worse; even the A. F. of L. would have been better than the thing you got into;" and we had some argument on that and Jim told me, [279] he said, "Dad has spent \$6,000 on me during the past year investigating the different labor organizations and how it was affecting business, but I know we cannot operate with your kind of organization, and we will shut her down."

Q. Did he give any reason why operations could

(Testimony of Leon M. Wise.)

not continue under an organization such as he referred to? A. Yes, he did.

Q. What was it?

A. I asked him why he would shut down as long as he was getting along with us, the same as he might as if we formed our own organization here, or with the A. F. of L.; why we could not get along as well under the set-up affiliated under the C.I.O.; and Jimmie tried to tell me that I did not know what I was talking about or the kind of organization it was, words to that effect; and he said he had a lot of timbers on the ground, where they were really up against it and he retorted that if they could not gain their end that way they would burn them out.

Q. Was there anything further said during that conversation?

A. Yes, Jimmie said, "We don't have to bring men across the State line, we can get 300 men right here to go up and fill that job if we need them. And I asked him who the 300 men were and he said the men were on W.P.A. and on relief; and I said "Well, I don't hardly think you can; those men are organized." He said, "What?" I said, "Those men are [280] all organized here" and I said, "They belong to the Workers' Alliance. Did you ever hear of the Workers' Alliance?" He said, "Yes; I know they have a little organization here they belong to but it doesn't affect you fellows. Don't you know," said I, "the Workers' Alliance is affiliated with the C.I.O.?" He looked at me a few seconds and said,

(Testimony of Leon M. Wise.)

"No. I never knew that before." And I believe I told him, "Your Dad certainly wasted \$6,000 when he paid it to you to make you a labor investigator."

Q. Was there anything further to that conversation?

A. Yes. Jimmie said, "Well," he said, "We are going to reopen the camp;" this is later. He said, "We are going to reopen the camp; we are going to reopen the camp and going to reopen it under a different management and on a very small scale; we are not going to take any chances at all. We don't need this timber up here, we don't really need it at all;" and I told him, "As far as the people in this country are concerned, they don't care if you never take out another stick of timber. If you don't take it out, somebody else will sometime." And then I asked him what they were going to do with the five million feet which was down up there at that time. And jimmie said, "Three million and a half feet to be exact," he said, "we will pay the stumpage on that and stand the cost on it as it lies, which may cost us," I believe Jimmie told me, I believe it was \$14,000. And I [281] said, "Do you mean to tell me you would throw \$14,000 out on the street for no purpose whatever; without any reason whatever?" And he said, "Absolutely, it doesn't mean anything to us." And I said, "Jimmie, I believe \$14,000 would bust the Long Lake Lumber Company wide open." That is as I recall the conversation.

Q. Have you stated everything which transpired

(Testimony of Leon M. Wise.)

between you and Mr. Brown, Jr., at this conversation?

A. I would not know. We talked quite a long while. I believe that is the main part of it.

Q. Can you recall whether anything further was said?

A. I really cannot recall anything.

Q. During the time the camp was down, did this same Committee which was elected on June 6th function thereafter?

A. It did, with a change or two in the personnel of the original Committee.

Q. Did the Committee, after June 6th, meet with Mr. Robinson at any time? A. They did.

Q. Can you recall when the Committee next met with Mr. Robinson after June 6th?

A. We had four or five meetings or possibly six.

Q. Possibly six meetings?

A. At least five with Mr. Robinson.

Q. Where were those meetings held? [282]

A. There were tow, at least two I am quite certain we held in Mr. Robinson's office, and at least three in Mr. Hunt's office.

Q. Who were the individuals who constituted this Committee?

A. That is going to be hard for me to say; I can give you some who were on from start to finish, but there would be some of the Committee who got a job somewhere else and we would put another man in his place, and he would get a job maybe some other place and we put another man in his place.

(Testimony of Leon M. Wise.)

I recollect all who did serve on the Committee, but as to the time they were on the Committee at certain meetings, I cannot recall.

Q. Will you relate who the individuals were who constituted the Committee during the period when the Committee was meeting with Mr. Robinson?

A. There was Clyde Smith, Amon Garvin, Martin Hanson, Greg Moore, "Slim" Burford.

Q. Is that A. J. Burford?

A. Yes; I never did know his first name, myself; on the original committee there was Boyd Stevens and Kirtley; I don't know his first name, I don't believe either Stevens or Kirtley were ever on any Committee when we met with Mr. Robinson downtown; Kirtley could have been on the first one but I don't remember. The purpose was to effect a settlement if it was possible. [283]

Q. Anything else?

A. Yes, there was lots of us, I don't know exactly what you mean. Our main objection was to effect a settlement.

Q. Was there any discussion on the subject matter of obtaining recognition? A. Yes.

Q. What was the proposition advanced in that regard?

A. At every meeting and all the time we tried to get a card check, a membership card check against the payroll of June 5, in any way we could get a check on almost any kind of terms.

Q. Was that proposition made by the Local to Mr. Robinson? A. It was.

(Testimony of Leon M. Wise.)

Q. And what was the reaction of Mr. Robinson to that proposal when it was first advanced?

A. It was agreed to.

Q. And were the cards ever produced?

A. Always.

Mr. Walker: (Indicating a bunch of Union membership cards): I will have copies of these substituted, but may they now be marked for identification Board's Exhibit No. 5.

Trial Examiner Hekton: They will be so marked.

(Thereupon the cards hereinabove referred to were marked Board's Exhibit No. 5 for identification.)

Q. (Mr. Walker): I hand you what is marked Board's Exhibit [284] 5 for identification and ask you what they are.

A. They are our membership cards. I imagine they are all Long Lake Lumber Company men, I don't know.

Q. Were those the cards, or cards similar to those, if not the identical ones, which were brought to Mr. Robinson or to Mr. Hunt's office?

A. Yes, they are. I have looked through here, they are the identical ones.

Q. Look through them and see if they are, so you will know now.

A. I could not be positive on all of these, I imagine they are all right, but I could not tell without a payroll check there now. There might be one in it somewhere that is not, I don't know.

(Testimony of Leon M. Wise.)

Q. Was the card check made?

A. It was started, I don't know, three or four times but it was never finished.

Q. What happened? What happened to the checking; what happened to interrupt the check?

A. We were agreed on a card check, would start in on the card check. Something would come up, and Mr. Hunt would doubt whether—I could not recall in so many words, just how he said it; but he would doubt whether some were authentic; saying that anyone could have signed them, “I could have signed anybody's name to that,” things like that.

[285]

Q. Are you relating things said by Mr. Hunt?

A. Yes.

Q. Go ahead.

A. Well, he would say, “How did they know,” that was the way he put it, “How did they know that they represented those members; I might have filled them out; maybe the men did not sign their names, or it may be were clubbed into it, and he maybe was now sorry his name was on there.” It was the same thing every time, there was no card check made.

Q. At the time the card check was first proposed and agreed upon, was there any suggestion that the agreed terms by the parties be embodied in a written instrument?

A. I won't answer that as the first proposition; I believe that was the second proposition. The first proposition was: There was no argument about a

(Testimony of Leon M. Wise.)

written instrument or anything; it was our cards against the pay-roll and we will settle it right there. It may be the third time or the next time on the card check when this came up about having it in writing and I believe that was to be referred to the Labor Board which was to supervise the card check; I am not familiar with the routine of it; that was the one on one card check.

Trial Examiner Hekton: You were going to have the card [286] check put down in writing? I am not quite sure I understand.

The Witness: No, I believe the way it was, it was to be put in writing.

Trial Examiner Hektoen: What?

The Witness: That we were holding this card check—that it was agreeable to both parties to hold this card check, and the Labor Board would make the check certification, I believe.

Trial Examiner Hektoen: That is what I wanted to know.

Q. (Mr. Walker): Was it one of the provisions to be included in the written instrument, that upon the Union proving its majority as a result of the check it thereupon became the exclusive bargaining agent for all the employees?

A. Yes, it would have to be.

Q. Was that agreed upon by the parties?

A. Yes.

Q. And was there a provision that the Union should call off its strike and forego taking any further economic action?

A. Yes.

(Testimony of Leon M. Wise.)

Q. Was that agreed upon by the parties?

A. Yes.

Q. Was this written instrument ever executed?

A. No.

Q. Do you recall why?

A. I was so positive it never would be executed, I really [287] forget why it was not; I know it was not.

Q. Was there any other alternative proposal in view of an executed written instrument?

A. On the card checking?

Q. Yes. A. I don't recall it.

Q. I hand you what is marked Board's Exhibit 3 for identification and ask you if you know what that instrument is.

A. Yes, I certainly do.

Q. What brought about the drawing of that instrument marked Board's Exhibit 3 for identification? A. You have me confused on that.

Q. Why was the letter written?

A. I thought we were talking about the first time or two we talked over the card check. We finally, I believe, toward the last got down to this: Where they would not sign a stipulation, as I remember, Mr. Hunt said, Mr. Robinson would not sign anything, he would not sign any stipulation and Mr. Roll suggested then that both parties write a letter to this Mr. Eaton embodying the same terms which would have been in the stipulation; and at that time he told all of us just what would be put

(Testimony of Leon M. Wise.)

in this letter and I helped draw that one letter up which you have just showed me.

Q. That is Board's Exhibit 3 for identification?

A. Yes, sir. That is exactly as we agreed to write our [288] letter, as I understood it. Mr. Robinson was supposed to write a letter identically the same as ours to the Regional Director, I believe it is.

Q. In view of the execution of the written instrument, was it agreed between the parties that the terms of the orally agreed upon arrangement would be embodied in the letter, which letter should be, or which letters should be exchanged by the parties?

A. Yes, that is just what I have been trying to say.

Q. Was a copy of Board's Exhibit 3 for identification ever delivered to Mr. Robinson or Mr. Hunt, do you know?

A. Yes.

Q. And did the Local Committee ever receive a copy of what is marked Board's Exhibit No. 4 for identification?

A. Yes.

Q. Look at it.

A. I know what it is. I remember when we got it.

Q. Was the card check ever completed?

A. No, we refused to accept that letter, we could not accept that; we acted in good faith and meant what we said and wrote the letter just as Mr. Roll suggested we write it, word for word as Mr. Hunt had agreed to do; he agreed to do the same thing.

Q. Where was this suggestion made?

(Testimony of Leon M. Wise.)

A. Where? [289]

Q. Yes; where?

A. It was made at that meeting.

Q. Now, right there was a subsequent proposition offered instead of determining or showing the majority by a card check? A. Yes.

Q. What was the next suggestion?

A. When this fell through an election was proposed.

Q. And was one of the suggestions at the conference at which the election was discussed, the camp would reopen as soon as possible after July 5th, 1939? A. Yes, sir.

Q. And was it agreed at this conference that if as a result of the election the Union should obtain a majority that it would thereupon become the exclusive bargaining agency of all the employees?

A. Yes.

Q. Was that agreed upon? A. Yes, sir.

Q. Was there any discussion about an election date? A. Yes, there was.

Q. And was an election date determined upon?

A. No.

Q. Was there any agreement as to when the election would be held during the time when this discussion was going on?

A. There were two dates proposed. [290]

Q. What were they?

A. One was on July 6.

Q. And who made that proposal?

A. Mr. Robinson.

(Testimony of Leon M. Wise.)

Q. What was the other proposal?

A. I believe that was on July 12th.

Q. Who made that proposition?

A. The Committee.

Q. Was there any agreement as to which date should be selected? A. No.

Q. Did the Union at any time ever agree to hold the election on July 6th? A. Yes, sir.

Q. When was that agreement entered into?

A. I would have to go a long way around to get to that. Mr. Robinson proposed that we hold the election on July the 6th. I wanted it on the 12th. I guess I was the only one that did look at it in that way, but we had got the run around on this card checking so many times I was suspicious of this; and I knew we had men in Washington away down south of whom I did not know the addresses; some had gone visiting and some were in Montana and I could not possibly see how opening the camp so quickly after the Fourth when they would come stringing in for a week after the Fourth—I didn't see how [291] we could have our men here by July 6th; but the rest of the Committee did want to hold it on July 6th, and I went down and discussed it and agreed to let them know of one of the two days; but they would not consider July the 12th at all; and we agreed to let them know and we went down to the hall, just the Committee, and we had an awful argument down there, but I had to refuse, myself, to have anything to do with July 6th.

(Testimony of Leon M. Wise.)

Q. Don't get off onto something else. Let us get this. During the Committee meeting with Mr. Robinson in Mr. Robinson's office at that time, did the Committee agree to accept July the 6th as the election date?

A. No, they agreed to take July 12th but as I say, I tried to get over that; we told them we would try to let them know about July the 6th, that was the reason we held the Committee meeting.

Q. Didn't that meeting up at Mr. Robinson's office break up and Mr. Roll and Mr. Hunt walk over to Mr. Hunt's office and start to draw up the papers; isn't that correct? A. Yes.

Q. And while he was in the process of drawing up the papers, the Committee came back and revoked the selection of July 6 as the date, is that correct?

A. As I recall I believe we just kept up for this argument and the majority of the Committee was agreeable to July 6th [292] and I was not, and it finally broke up in this way, that we would let them know the next day as to whether July the 6th would be acceptable.

Q. Did the Committee meet with Mr. Robinson or Mr. Hunt again after that? A. Yes.

Q. And what was the discussion then?

A. We came back for that card check again.

Q. After the election arrangement had fallen through another proposition was made for a card check, is that correct?

(Testimony of Leon M. Wise.)

A. Yes, sir. We were trying all the time to get a card check.

Q. Did the election discussion—at any of these conferences, in addition to the Committee, was Mr. Herbert Johnson in attendance? A. Yes.

Q. Will you state who he was?

A. Mr. Herbert Johnson was the business agent of this Local.

Q. Did the Committee have any meetings with Mr. Robinson at which Mr. Johnson was not present? A. Yes.

Q. When was that or where was it?

A. It was in Mr. Robinson's office.

Q. How did that come about?

A. Mr. Hunt took exception to Mr. Johnson always being with [293] us and doing the talking.

Q. What did Mr. Hunt say, if you recall?

A. He said, how could Mr. Robinson talk to his men or his men talk to him when Mr. Johnson did all the talking.

Trial Examiner Hekton: That is as to Mr. Johnson?

The Witness: Yes; and he said, "You are not an employee of Mr. Robinson, he doesn't know you; they never get a chance to say anything, neither does Mr. Robinson, unless he talks to you."

Q. (Mr. Walker): Did the Committee say anything to that?

A. Yes; I told Mr. Hunt that I thought he had the wrong idea; that Mr. Johnson was employed by us, the same as he was employed by Mr. Robin-

(Testimony of Leon M. Wise.)

son; that we never talked with Mr. Robinson without Mr. Hunt being present when we talked with Mr. Robinson at any time; that we would leave Mr. Johnson out of it but Mr. Hunt would have to be out of it, too.

Q. Was such an arrangement made?

A. Yes, sir.

Q. Did the Committee meet with Mr. Robinson?

A. Yes.

Q. When was that meeting?

A. Up at Mr. Robinson's office.

Q. Was there any discussion?

A. Yes, there was a lot of it, but I did all of it.

Q. What was said? [294]

A. Mr. Frank sat down in the chair and said, "Boys, I have agreed to meet with you but I am not saying a word, I am not allowed to say anything." He said, "You talk all you want to and as long as you want to, and I will sit here and listen to you. I am not saying a word; my hands are tied."

Q. Was there anyone else present in the office besides the Committee and Mr. Robinson?

A. Mr. Davis came in for a few minutes and he turned around and went out—you said besides the Committee and Mr. Robinson?

Q. That is right. After this suggestion for the holding of an election on July the 6th fell through, was there any further suggestion or proposal made with respect to the holding of an election?

A. Yes, sir.

(Testimony of Leon M. Wise.)

Q. When was that?

A. Well, as I said, we held, I believe, two, three or four Committee meetings over there that afternoon and I was the only one which held out for July 12th and we finally boiled it down, as I recall, when we left up there; we told them we would let them know the next day and the Committee finally told Mr. Johnson and I they would leave it up to him and I as to whether that election should be held on July the 6th, and I went home. As far as I was concerned there would not [295] be any election on July 6th and I went home and Mr. Johnson came out early in the morning and wanted the election and we checked the cards on the table and Mr. Roll had to leave and he was quite anxious to get a settlement and he came out and gave me quite a talking to on the election; and I told him all right, you go ahead then, you will see positively about the election business, go ahead and hold the election on July 6th but it makes no difference anyhow, there won't be any election. But we gave Mr. Roll the authority to tell Mr. Hunt we would hold the election but I knew there would not be any.

(Thereupon at this time a short recess was taken, after which proceedings were resumed as follows:)

Q. (Mr. Walker): At any time during the period when the camp was not operating, was there a picket line set up? A. Yes.

(Testimony of Leon M. Wise.)

Q. And were you in attendance on the picket line at any time? A. Yes, sir.

Q. At any time when you were there did you see Mr. Robinson at the picket line? A. Yes.

Q. Do you know Fred Chaney? A. Yes.

Q. Do you know Arlie Chaney? [296]

A. Yes, sir.

Q. Did you see those two gentlemen at any time at the picket line with Mr. Robinson?

A. Yes, sir.

Q. Do you know Mr. Warren Ratt?

A. Yes, sir.

Q. Do you know Mr. Thurlow?

A. Yes, sir.

Q. Hugh Thurlow? A. Yes, sir.

Q. Do you know Mr. Allen Asher?

A. Yes, sir.

Q. At any time did you ever see any of those three gentlemen at the picket line with Mr. Robinson? A. Yes, sir.

Q. Will you describe what took place on the day when Mr. Asher and Mr. Ratt and Mr. Thurlow were at the picket line with Mr. Robinson?

A. Yes. We knew there was going to be an attempt to go through the picket line that morning. I believe we had somewhere around fifty men on the picket line; and at about 6:30 they began showing up.

Q. In the morning?

A. Yes; but it was not whom we expected to show up. All we had to go on was there would be

(Testimony of Leon M. Wise.)

a push to go through that [297] morning, just rumors, and there was all the way from 150 to 2,000 strikebreakers coming in to go through there.

Q. You had had that information, you mean?

A. Yes; and that was all we had; it was a rumor; and we were worried about that but these men started showing up; they were our own men.

Q. What had occurred which brought about the calling of Mr. Ratt and Mr. Thurlow and Mr. Asher out at that picket line?

A. Well, these fellows kept showing up and kept showing up, and we asked them what the idea was and their story was, they had been told that everything was all over and that a settlement was effected and they were to go to work that morning and they pulled up at the picket line; no one attempted to go through or cross the bridge.

Q. What was Mr. Robinson doing prior to the time that Mr. Thurlow, Mr. Ratt and Mr. Asher came out there?

A. These men all lined up and we talked to them, and Mr. Robinson came down the hill in his car and tried to get these men to drive through the picket line.

Q. How did he go about that?

A. Well, he asked them to go through the picket line and they refused; and he did not say anything much at that time. He figured they were afraid to go through and Mr. Chaney said, I believe, that that was an awful bunch of men to go through. [298]

Q. Did you hear Mr. Chaney say that?

(Testimony of Leon M. Wise.)

A. Yes; he told Frank to beat it to town.

Q. Prior to the time when he had gone to town, what did Mr. Robinson do or what had he been doing at the picket line that morning?

A. That morning?

Q. Yes.

A. He was just trying to get them men to drive through.

Q. Did Mr. Robinson get into his car and drive away from where the men were located at the picket line?

A. Yes.

Q. And did he later return?

A. He figured after Mr. Chaney told him this, he figured they were afraid to go through; and he said, "You need not be afraid of them because I go through all the time." And he jumped in his car and started through but he saw that nobody was following him and he jumped back and motioned to the crew saying, "Come on, what is the matter with you, I will run through and see what happens." And he started out again saying, "Follow me." And he did the same thing three times. And so they would not follow, he, seeing Dwight Lewis was standing there, he said: "Dwight, come with me, I am taking you through, there is nothing to be afraid of." And the men were just standing there, and some stated they had not intention of going through there; so Frank wheeled his car around and hit out for Sand Point. [299]

Q. Did he later return?

A. Yes.

(Testimony of Leon M. Wise.)

Q. Who was with him when he returned?

A. The Sheriff.

Q. Who was that? A. Warren Ratt.

Q. Anyone else? A. The Prosecutor.

Q. Who is that? A. Allen Asher.

Q. Anyone else? A. Hugh Thurlow.

Q. Who is he? A. A Deputy-sheriff.

Q. When they arrived at the picket line what transpired?

A. When they arrived at the picket line Mr. Ratt came over to where we were at the line and said, "Boys, what in the world is the matter here now?" And he said, "Why won't you let Robinson's men go through here?" And then Mr. Johnson and I did all the talking and we said that we were not preventing the men going through here; and while the conversation was taking place we walked across the bridge and we said we were not keeping the men from going through; they can go through if they wish, and we were admittedly within our rights; [300] and there was quite a hubbub and uproar and Mr. Ratt then said to some of the fellows standing there, "Do you boys want to work?" And they replied, "Sure, we want to work." And he said, "Is there anyone keeping you from going through there?" And they said, "No, we want to work but we don't want to scab."

Q. Do you recall who made that reply to Mr. Ratt?

A. I believe that was one of the Chaney's. There

(Testimony of Leon M. Wise.)

was a lot of confusion around there. So I told Mr. Ratt——

Q. (Interrupting) One moment. Where was Mr. Robinson during this discussion between Mr. Ratt and the two Chaney's? A. He was there.

Q. Where was Mr. Robinson during the time you conversed with Mr. Ratt?

A. He was standing right there.

Q. Go ahead.

A. I have gotten a little ahead of myself. There I told Mr. Ratt, when we got across the bridge and he asked the boys whether we had kept them from going through and if they wanted to go through, which he did; they said they did not want to go through and Frank Robinson was still trying to get a few of them to go through and was working pretty hard at it; so I told Mr. Ratt, "Why don't you ask all these men here," I said, "if they are Union men, ask them to hold up their hands."

Q. Did Mr. Ratt do that? [301]

A. He did.

Q. What did the men do?

A. Every one of them right there held up his hand.

Q. Are you speaking of the picket group?

A. No; there was not a man of the picket group across that bridge except Mr. Johnson and I on that side.

Q. The picket group was on which side of the bridge? A. The west side of the bridge.

(Testimony of Leon M. Wise.)

Q. And the group to which Mr. Ratt directed his talk was located where?

A. The east side of the bridge.

Q. And the bridge is located where?

A. It is a bridge over the Caribou Creek.

Q. What did the men do when Mr. Ratt asked them to hold up their hands?

A. They all held up their hands.

Q. Did Mr. Ratt say anything to that?

A. Yes.

Q. What? A. Why, he got mad.

Q. What did he say?

A. I cannot recall the exact words, but I know he made it pretty strong; he turned to Frank and said, "What in the hell are you trying to make out of me, anyhow?" He said, "This is the third time you have called me out here on a wild goose [302] chase for nothing. These men are of the same type as on the other side of the bridge; what have you been trying to do; what have you been trying to tell me?" And Mr. Ratt tried to effect a settlement there.

Q. In what manner?

A. Every time he came up there he didn't want to have trouble, but wanted it settled and said, "Why don't you boys try to get together with Frank and try to settle the thing?" And Mr. Johnson and I said, "Sure, we can settle it right here and now. Here is the Long Lake Lumber Company crew on both sides and we will hold a card check right now." And Frank was walking up and down

(Testimony of Leon M. Wise.)

and Frank said, "I won't recognize the Union." And Mr. Johnson and I then talked to him and said, "Let us hold an election in the road." And all he would say was, "I won't recognize the Union." And Mr. Chaney took me to one side and said, "Frank don't like you and you are getting him excited. Let Mr. Johnson talk to him; he may be able to do something." And I stepped aside and let Mr. Johnson do the talking. That is when I talked to Mr. Asher.

Q. After this time were any more attempts made to get together?

Trial Examiner Hektoen: Have we the date on which these occurrences happened?

Q. (Mr. Walker) What is your recollection as to the date when that occurred? [303]

A. Was that on Monday morning? I really don't know; I have lost all track of dates at that time but it would be pretty close—it would be pretty close, it was the first organized attempt which was made to go through there.

Q. After this event, was any more effort made to escort the crew through the picket line?

A. Not for—everything was calm and peaceable for four or five days.

Q. Then what happened?

A. It was just about—during one evening when Sheriff Ratt and Mr. Webb came up there, Mr. Ratt and Sam Webb.

Q. Who was Sam Webb?

A. He later introduced himself and was the Lieutenant of State Police.

(Testimony of Leon M. Wise.)

Q. Was Mr. Robinson present? A. No.

Q. What did Mr. Ratt and Mr. Webb do?

A. I could not say anything as to what happened at that conversation. They took Herbert Johnson into the car with them. I could see but could not hear. I knew that Mr. Ratt and Mr. Johnson were having it hot and heavy, and all I know is what Mr. Johnson told me the next morning after he got out of there.

Q. Did anything take place the next morning?

A. Yes. [304]

Q. What was it?

A. As I say, I would have to kind of lead up to that. When Mr. Johnson told me that Mr. Webb was going to escort these scabs through the next morning by aid of the State Police, Mr. Johnson and I came both to town and I rustled up every man I could get.

Mr. Walker: Leave that out.

Q. What happened next morning?

A. The next morning the State Police showed up.

Q. How many?

A. Only two that I knew, Sam Webb and George O'Donnell and two other uniformed men and some man in plain clothes.

Q. Did the crew go through the picket line?

A. Yes.

Q. What was Mr. Robinson doing this time?

A. Mr. Robinson was in the lead of the procession.

Mr. Hunt: What was that?

(Testimony of Leon M. Wise.)

Mr. Walker: He said that Mr. Robinson was in the lead of the procession. That is all.

Cross Examination [305]

Q. In regard to Mr. Brown, Sr., you met him on numerous occasions at the camp?

A. I didn't meet him, I saw him.

Q. You didn't meet him at the time you had all this conversation with Clyde Smith about the jammer in 1938?

A. With Clyde Smith about the jammer in 1938; did I meet James Brown, Sr., with Clyde Smith?

Q. You met Jimmie Brown with Clyde Smith at the jammer; who was present at the time you met Jimmie? A. There was——

Q. At the time you had the conversation, I mean, with reference to dozers coming up?

A. There was Earl Chaney, Slim Burford, Henry Hanson, Clyde Smith.

Q. Did Jimmie say to you that he would have the dozer come up through Mr. Robinson; or did he say he was going to do it?

A. He said he was going to do it.

Q. What did he say?

A. I had backed it over a log and there was no turn-around for a long, long ways; there was a bad road that curved at places in it and I could not back and I knew I could go up ahead, and I was trying to turn around where there was no turn-around. I backed over this log and Haney came up with the team and we were trying to get it off the log, and

(Testimony of Leon M. Wise.)

James [321] Brown, Jr., turned up about that time and I was plenty hot about the road.

Q. I know; what did Jimmie say?

A. The way I put it was I had backed up the damned road a mile and a half and there was no turn-around and he said there should have been some turns in the road, "I will have the bulldozer come up here and put some turn-arounds in the road."

Q. Now let's go on to on or about the 10th of August, 1937 where you had a conversation in the presence of Mr. Critchell and Jimmie and the blacksmith when looking over an International truck. Did Jimmie say he was with his Dad when he purchased the truck and that he was with him when he purchased that identical truck?

A. He said he was with him when he paid for that truck.

Q. That identical truck?

A. That same truck.

Q. When was it you met Mr. Brown, Sr., in the Fall of 1938; do you recall the incident; you said about the end of the 1938 season?

A. Yes, I recall it.

Q. And you had a talk with Mr. Critchell and his mechanic there? A. Yes.

Q. Mr. Brown would naturally be interested in the produc- [322] tion of the logs up there, wouldn't he?

A. I would not be surprised if he was.

(Testimony of Leon M. Wise.)

Q. You know him as the principal officer or owner? A. Yes, sir.

Q. Did he say he was going to send some new equipment up there or what did he say?

A. He asked Mr. Critchell if he could build him some equipment, a jammer.

Q. That he could build for Mr. Brown or whom?

A. He said, "Do you think you could build a jammer that can operate eight hours without breaking down?"

Q. What did Mr. Critchell say?

A. He said "Yes."

Q. And Mr. Brown, Sr., then told him what?

A. After a little more conversation Mr. Brown gave him to understand he meant a real jammer and no cheap work outfit, no secondhand stuff, but of the very best material he could get.

Q. Did he order Mr. Critchell to make one?

A. He asked him if he could build it.

Q. Did he order Mr. Critchell to get a new jammer in there? A. No.

Q. He didn't do that. This is a casual conversation between Mr. Brown and Mr. Critchell as to how the operations were going? [323]

A. It didn't seem so casual, I could see that Mr. James Brown, Sr., knew what he was talking about and knew what he wanted and that was what he wanted and he didn't want anything different from that.

Q. Did he order Mr. Critchell to produce it?

A. He told him he would see that he had that

(Testimony of Leon M. Wise.)

and Mr. Critchell said, "Sure, if I have the stuff to work with."

Q. Where was Mr. Robinson?

A. He was in the blacksmith shop.

Q. Did he hear the conversation?

A. I imagine he did.

Q. Did he take any part in the conversation?

A. I never heard him say a word. [324]

Q. Mr. Johnson made all the arrangements for holding the meeting at the camp, or did you make them?

A. Mr. Johnson and I did. I had more to do with calling the meeting than Mr. Johnson did, I guess.

Q. Mr. Robinson told you to go ahead and hold the meeting on the 6th; he gave his consent to hold the meeting, didn't he? A. Yes, he did.

Q. Do you have in your possession or is it available to you, Mr. Wise, the statement and demands which Mr. Herbert Johnson had written down and presented to Mr. Robinson that day?

A. You mean the original which was scratched down at the time?

Q. Yes. A. No, I have not.

Q. You don't know where it is?

A. No, I don't.

Q. Approximately how many men were in the camp in 1938; what is the average number of men employed at the Robinson camp at any time? [331]

Mr. Walker: Objected to as immaterial and not proper cross examination.

(Testimony of Leon M. Wise.)

Trial Examiner Hektoen: He may answer if he knows.

Q. (Mr. Hunt): What was the average number of men in the crew?

A. In the whole camp?

Q. Yes.

A. It would have to be my guess.

Q. Yes.

A. I imagine it was somewhere, when in full operation, 125 to 135 men.

Q. Can you run a camp of that size without a bull-cook; is it practical; is it done?

A. No, it is not done.

Q. You always have a bull-cook?

A. In a camp of that size, yes.

Q. You did have a bull-cook all through the year 1938? A. No.

Q. I do not mean according to the calendar, I mean during the operations; during the time the camp was in operation.

A. I understand; I wasn't ever back in that camp again after we shut down.

Q. In 1938?

A. Yes; there was no bull-cook at the time of the lockout.

Q. I am talking about 1938; you said you were there in the [332] Spring of '38.

A. I beg your pardon.

Q. When you were there did they have a bull-cook all the time?

(Testimony of Leon M. Wise.)

A. While I was there in the cookhouse they certainly had a bull-cook, but for the year I certainly would not know.

Q. I want you to tell me now what Mr. Johnson said to Mr. Robinson that evening relative to Mr. Robinson's statement he was merely trying to get information; what did Mr. Johnson tell Mr. Robinson then?

A. You know it would be impossible for me to have a memory so that I could give it to you word for word. I will try to give it to you.

Q. I don't ask for that ever in my questions.

A. I will do the best I can. He said, "Well," Mr. Robinson said, "I am trying to get some information." And Mr. Johnson said, "Don't ever try to do that again. Union affairs are none of your affairs; what they do in their Union activity is none of your business; don't ever do that again."

Q. Did he threaten Mr. Robinson at any time?

A. No.

Q. Did he raise his voice?

A. His voice was always going up and down but I never paid any attention to that.

Q. It didn't scare Mr. Robinson any, the statement he made? [333]

A. I don't know why it would, I don't believe it was intended to scare him. [334]

Q. Let us get to the meeting in my office when you were present and Herbert Johnson was present and several others of the Committee, where you say that Mr. Johnson placed the membership

(Testimony of Leon M. Wise.)

cards on my desk. I will ask you whether I was ever given the opportunity to complete the examination of that group of cards?

A. Yes, you had an opportunity.

Q. To complete my examination?

A. Not to complete the examination that you were giving them, no.

Q. As a matter of fact, Mr. Johnson reached over my desk, picked up the cards and put them in his pocket before I got into it?

A. Yes, at that particular time.

Q. And he left shortly after and took the cards with him? A. Yes, sir.

Q. Let us get back to the meeting with Mr. Robinson in the [336] J & L Building, Sand Point, Idaho, which happened on the 29th day of June, on Thursday about 10:00 o'clock p.m. Is not it a fact we had that meeting at which Mr. Roll was present and Mr. Robinson and Mr. Davis and yourself and three members of the camp Committee: I ask you if it is not a fact we agreed at that time and place to hold a consent election to be conducted under the auspices of the National Labor Relations Board, and the election would be held on July 6, and the men would be permitted to vote in Sand Point, at the Sand Point City Hall and at the camp. Did we arrive at that agreement?

A. That was your proposition and I would not accept it.

Q. I asked if we did not agree to that agreement; I don't mean you and I, I mean the two

(Testimony of Leon M. Wise.)

groups, the Committee and Mr. Robinson and the whole bunch of us, didn't we agree on that in Mr. Robinson's office in the J. & L. Building?

A. No.

Q. Didn't we agree to sign a stipulation to that effect? I know it is hard to remember these various phases and conferences but as far as I know I was at only one conference in Mr. Robinson's office in the J. & L. Building with the Committee. That may help you to remember somewhat. I refer to this particular meeting. Didn't we agree that a stipulation would be signed to that effect calling for an election under the terms and conditions I have heretofore mentioned?

A. I am not positive; you may be right; I have these stipu- [337] lations that were proposed as coming rather fast times between election and the card check.

Q. Did we or did we not agree at that time and place we would join in petitioning the National Labor Relations Board to hold such an election under the terms and conditions of the stipulation to be gotten out that day?

A. I believe that was correct.

Q. All right; and at that time and place did Mr. Arden Davis, the bookkeeper for Mr. Robinson, present to the Committee a list of the men who were on the payroll of June 5th, 1939?

A. I believe he did.

Q. I will ask you further whether or not, when Mr. Roll and I left, whether or not the Committee

(Testimony of Leon M. Wise.)

stayed there, including Mr. Johnson, and conferred with Mr. Davis and Mr. Robinson, for the purpose—may I qualify that—for the purpose of checking the names on the payroll?

A. I remember about a starting to check——

Q. When I was there?

A. I don't know whether you were there or not. I know we had the cards at one time and Arden Davis was going through them.

Q. You don't know whether it was at that meeting or not?

A. No. I know we had the payroll.

Q. I am asking you if you remember whether Mr. Roll and [338] myself left Mr. Robinson's office and went to my office—went to my office from that particular meeting?

A. I will say yes, you did.

Q. Did you come into my office later that afternoon? A. Alone?

Q. Either alone or with the Committee, or with several members of the Committee; did you come to the office and call Mr. Roll out, Mr. Herbert Johnson being present also?

A. I believe that is correct; I don't just recall exactly.

Q. I will try to refresh your recollection; it is hard to remember these conferences. Do you remember the time you called Mr. Roll out of my office and Mr. Johnson and one or two other members of the Committee went across the street and sat on a fender or on the running board of a car

(Testimony of Leon M. Wise.)

and had a few minutes' conversation and then returned to my office?

A. I remember that. We had held this meeting in your office or——

Q. (Interrupting): No. I speak of the first meeting which was in the office of Mr. Robinson in the J & L Building, at which we agreed it would be the consensus of the opinion of all concerned that we ask the N. L. R. B. to hold an election and we agreed upon the terms and Mr. Roll and I went to my office and then five or ten minutes thereafter, Mr. Johnson accompanied by one or more of the members of the Committee came to the office and called Mr. Roll out. They went across [339] the street and sat on the running board or the fender of a car and had a conversation for about five minutes and then came back to my office. My question is, do you remember that date?

A. Yes, I remember that, yes.

Q. And after they came into the office, state whether or not Mr. Johnson advised me that the Committee would not consent to an election, or words to that effect, or Mr. Johnson told me it was all off, that there would be no election, and that no stipulation to that effect would be signed; did that happen at that time and place?

A. As I recall that at that particular time we had a lot of meetings, but I am trying to isolate this one at that particular time. It seems to me that is the meeting when I was holding it up and the rest of the committee were in favor; and they

(Testimony of Leon M. Wise.)

wanted to hold another meeting to see as to whether we would have this check or have this election, because I definitely remember being down in the Union Hall at one meeting where I was trying to present my theory on the election.

Q. Let me put it this way: I will ask you whether or not at that time and place Mr. Herbert Johnson, as spokesman for the group, stated they did not propose to hold an election and at that time and place insisted that Mr. Robinson recognize the Union by virtue of the cards which Mr. Johnson had; [340] didn't that happen?

A. I believe it did.

Q. And then we left and the group started out, separated, there at that meeting and there wasn't much more said or done? A. I think so.

Q. Mr. Wise, I can't remember at which conference it was where this took place, but I will ask you whether or not I did not agree on one or more occasions to step out of the picture and have Mr. Herbert Johnson step out of the picture and let the Committee deal directly with Mr. Robinson?

A. Yes; that happened.

Q. That happened, didn't it?

A. Yes, that happened.

Q. Do you know of any time or any place where either Mr. Robinson or myself ever went through the list of the membership cards of the men who supposedly belonged to this Local?

A. When you had gone through them?

(Testimony of Leon M. Wise.)

Q. Do you know of any time when I and Mr. Robinson went through them? A. Yes.

Q. When and where?

A. At this one time when I said that we would not stand for the way you were going through them and we agreed to hold a card check. [341]

Q. At that time and place Mr. Johnson picked the cards up off my desk, didn't he?

A. Mr. Robinson, before you took over the cards, Mr. Davis and Mr. Robinson had been checking them against the payroll.

Q. Did I at any time have an opportunity to check the cards from start to finish; put it that way?

A. Yes, you could have had, you were right there with them.

Q. We agree that the cards were there in the same room that I was at the time the Committee was there and Mr. Johnson was the custodian of the cards and he carried them with him.

A. Yes, he did.

Q. Did Mr. Johnson at any time let me look them over, or check the signatures against the signatures on the payroll?

A. Yes, we agreed to that at any time.

Q. We agreed to it, but was it done?

A. You could have checked the signatures against the payroll at any time.

Q. How many times was the stack of cards put on my desk during the various conferences?

A. I never went to a conference, as I can recol-

(Testimony of Leon M. Wise.)

lect, but from start to finish it was insisted all the time we hold the check.

Q. We discussed the cards and the cards were always mentioned? A. Yes.

Q. But I am trying to get at whether Mr. Johnson ever per- [342] mitted me to take the cards and make a list of the men thereon and check them against the payroll?

A. I remember Mr. Robinson asking to allow you to make a list of those cards so you could check those cards against that payroll at any time. We did refuse to let you make a list of the cards; that is correct.

Q. Isn't it a matter of fact only on one occasion the cards were ever handed me and put on my desk; and I will ask you further, isn't it a fact that on one occasion before I had turned over as many as ten cards, Mr. Johnson reached over and picked up the cards and put them in his pocket?

A. You were not checking them on the payroll: Arden Davis at the time was at the other end of the desk; you were not checking the cards, you were looking at the men's names on the cards; and you stated you doubted whether they were authentic, saying that anyone could have filled them out and put anybody's name upon there.

Q. Isn't it a fact that I mentioned early in the game that I had decided to look at them and I said, "Here are two cards signed by the same man." Did I say that?

A. Yes, and I answered——

(Testimony of Leon M. Wise.)

Q. (Interrupting): Wait; I asked you further, after I looked over a few of the cards, I made the statement "Most of these men have not paid their dues;" did I make that statement? [343]

A. Yes.

Q. Isn't it a fact that then and there Mr. Johnson reached over and picked up the cards off my desk and put them in his pocket and the checking was ended? A. It was.

Q. O.K. That is what I was getting at. Did you or any other member of the Committee after this meeting about which I have been talking, on the 29th of June, at which meeting we agreed to hold an election on July 5th or 6th, did you or the Committee at any time after that directly tell Mr. Robinson or me that the men were willing to hold an election on July 6th?

A. Whether Mr. Johnson or the Committee told you?

Q. Yes; this may help you. The conversation we have been discussing was in June, 1939—June the 29th.

A. Yes; on the payroll, I remember it perfectly.

Q. You remember the Committee talking and I asked a long question. Did you or the Committee ever come to me after that day, or Mr. Robinson, and say, "It is all right to hold the election agreed on, it will be on July 5th?"

A. No, I didn't; but as to the rest of the Committee, they might have; they could have told you that or Mr. Johnson could have told you that.

(Testimony of Leon M. Wise.)

Q. Let us put it this way: Did you or any one of your Committee, any one of them, ever come to me or to Mr. Robin- [344] son and make that statement? A. Not of my own knowledge.

Q. During those days we were dealing with the Committee and the Committee was the only one who had a right to speak for the men, except Mr. Roll and Mr. Johnson, of course?

A. That is correct.

Q. I believe that day that Mr. Roll left again for Seattle and went away again to Seattle that night?

A. Yes, I am quite sure of that.

Q. Mr. Wise, are you an official of this Union?

A. I am not.

Q. Are you an official of the local Union?

A. No.

Q. You are not an organizer, yourself?

A. No.

Q. You are not employed as an organizer?

A. No.

Mr. Hunt: Shall we now take a recess; I don't think I have any more questions of Mr. Wise at this time. [345]

Q. (Mr. Hunt): Mr. Wise, you stated heretofore that Mr. Robinson agreed with the Committee he would go back to work on July the 5th, is that correct? A. Yes.

Q. I will ask you whether or not Mr. Robinson endeavored to comply with those terms?

A. No.

(Testimony of Leon M. Wise.)

Q. Did Mr. Robinson attempt to open up the camp at any time between June 6 and July 5th?

A. No.

Q. Did he try to open up the camp on July 6th?

A. No.

Q. Did he try to open up the camp on July the 7th?

A. On July the 7th there was a picket line on the road.

Q. I asked you if on July 7th, Mr. Robinson tried to take men up there to open up the camp, take men up to the camp?

A. On July 7th?

Q. Yes.

A. Not to my knowledge, he didn't. [346]

Q. What was he taking the men up there for?

A. What men?

Q. The men he tried to get through the picket line?

A. There were no men trying to get through the picket line that day.

Q. Did any of the men go as far as the picket line? A. Yes.

Q. What did they go there for?

A. They never said.

Q. Did Mr. Robinson tell you? A. No.

Q. Didn't you say that Mr. Robinson marched up and down the road quite agitated and excited and exhorted the men to go on through?

Mr. Walker: May I ask counsel to state what date he refers to?

(Testimony of Leon M. Wise.)

Mr. Hunt: We are talking about July 7, now.

The Witness: Will you give me the question again?

(The last question referred to was there-upon read.)

A. He did, but not on July 7.

Q. What date was it?

A. I am not clear as to exactly what date it was; but it was quite awhile after the picket line was established.

Q. The picket line was just established on the 6th and would you say that it was prior to that that Mr. Robinson had men [347] come to the camp for the purpose of having them work?

A. Yes.

Q. Approximately how many?

A. All of us were there July 5th or the 6th, the day we were supposed to go to work.

Q. Why didn't you go to work?

A. There was no one there to put us to work.

Q. Where was Mr. Robinson, if you know?

A. He wasn't in camp.

Q. How long did the men stay in the camp on July 5th?

A. They were up there at seven o'clock ready to go to work that morning; the time it was agreed that we be there to go to work, the time we always had them there to go to work.

Q. Approximately how many men were there to go to work that day?

(Testimony of Leon M. Wise.)

A. I would not have any idea. The entire personnel of the camp, as far as I know, that had been working.

Q. Quite a few of them?

A. Yes, you bet.

Q. Was it raining on July 5th when you were up there? A. I believe not.

Q. When did you first see Mr. Robinson on July the 5th? A. At Sand Point?

Q. At what hour, was it the morning or afternoon?

A. It was in the afternoon, I am quite sure, I am not posi- [348] tive.

Q. Who was in charge of the camp when you went up there on the 5th?

A. For two or three hours I stayed around there and there appeared to be nobody in charge of the camp; Mr. Davis was in the camp.

Q. What did he tell you?

A. He informed me that Mr. Robinson was downtown and we would have to go to town and rehire through him to come back to go to work.

Q. Was there any work to be done in the camp on July 6th?

A. I may have my dates a little crossed as to July the 5th and 6th; there was work done by one of our men on July 5th.

Q. July 5th or 6th, do you say?

A. I said 5th, it may have been the 6th; I remember the day perfectly but I don't remember the date. I believe it was the 6th.

(Testimony of Leon M. Wise.)

Q. After that did he endeavor to open up the camp and was restrained by a group of men on the picket line which prevented the men from going through; is that correct?

A. Some time after that date, yes.

Q. Let us go back to the meeting in the J & L Building at which all were present. Isn't it a fact that Mr. Robinson wanted to hold an election about July 8th or even a few days thereafter in order that the men might get back to camp or [349] back to town at Sand Point?

A. I don't recall that.

Q. Isn't it a fact, Mr. Wise, that the Committee's idea was that the election should be held on the 6th?

A. All of the Committee outside of myself; it was not our proposition on that date.

Q. I am not talking about the Committee's action; the majority of the Committee's action was for the 6th?

A. That it should be held on the 6th, yes.

Q. I will ask you if it is not a fact an objection was made to hold the election on the 8th or 10th for the reason that Mr. Robinson might use pressure on the men in the community; did anybody make such a statement as that?

A. Not that I recall.

Q. The fact remains, however, you did agree on the 6th?

A. Yes, the majority of the Committee and everyone else concerned.

(Testimony of Leon M. Wise.)

Q. Of course we were all bound by a majority action of the Committee, or they were, weren't they; you have referred to it some several times that some of the men agreed but you did not?

A. Yes.

Q. The action of the majority of the Committee was binding on the Committee, wasn't it?

A. Yes, sir. [350]

Q. You made a statement you knew there would be no election held; how did you know that?

A. I knew it because we went through it so many, many times before on the card check and discussed elections and discussed everything and did our best to go through with it and it blew up every time.

Q. You felt after Mr. Robinson had signed the stipulation and a copy of that was sent to the N. L. R. B., requesting an election be held, you knew no election would be held?

A. No, I did not know that.

Q. You felt after the stipulation for an election was signed that the election would be held?

A. I thought so then.

Q. You stated this morning, perhaps on cross examination, that Mr. Robinson had an opportunity and did examine the membership cards. Will you tell me where that took place and who was present?

A. That took place at one time in your office. There was Mr. Robinson, Mr. Davis, yourself, Greg Moore, Martin Hanson, I believe Clyde Smith, Her-

(Testimony of Leon M. Wise.)

bert Johnson, possibly Amon Garvin and myself.

Q. What did Mr. Robinson do with the cards at that time?

A. Him and Mr. Davis started going through the cards looking at the payroll.

Q. Then what happened? [351]

A. You requested to look at the cards; you reached over and got the cards.

Q. No, no, we are not together at all. I have asked you when and where Mr. Robinson had an opportunity to examine the cards at any time or place when I was not present.

A. When you were not present?

Q. Yes.

A. I beg pardon. At the time the Committee met with Mr. Robinson when neither you or Mr. Robinson were present—what I mean there is, you and Mr. Herbert Johnson were present, he had an opportunity to examine the cards, the cards themselves.

Q. That was at the camp?

A. No, in Mr. Robinson's office.

Q. Can't you fix an approximate date with relation to the meeting in Mr. Robinson's office when I was there, prior to that I presume?

A. I don't understand the question.

Q. Who was present at that meeting?

A. Who was present at that meeting?

Q. Yes.

A. There was Mr. Robinson, Slim Burford, Greg Moore, I believe Clyde Smith and myself.

(Testimony of Leon M. Wise.)

Q. Now tell me what was done in relation to Mr. Robinson examining the cards at that time.

[352]

A. I had the cards with me and I begged Mr. Robinson there for an hour, with the ones of us who were present there would take the cards of the June 5th payroll and check those cards and settle the thing right there without you or without Mr. Johnson, just the men and him; that is all I did talk about.

Q. What did he say?

A. All he ever did say was, "I can't say anything, my hands are tied; you can talk all you want, and I will sit here and listen," that is all he did say.

Q. Did he tell you owing to the National Relations Act he could not talk to you under the circumstances?

A. No.

Q. Did he say anything about a violation of the Act or anything which you could not do because it might be construed as a violation of the Act?

A. He didn't say anything. The only thing he said was, "I cannot say anything, my hands are tied," and he didn't say anything.

Q. But you talked to him for an hour?

A. Approximately an hour.

Q. On direct examination you stated when the four highway patrolmen came up the highway on a certain day the men did go through the line and went to the camp?

A. Yes.

Q. Can you place the date of that? [353]

(Testimony of Leon M. Wise.)

A. Not exactly, no; I cannot; it was somewhere around I imagine the 14th of July.

Q. After that the camp continued to operate the rest of the season?

A. It did not operate at full capacity.

Q. These men who went through the picket line with the four officers, were they members of the Union? A. No.

Q. Were any of them? A. Yes.

Q. Will you say most of them were men who had been on the payroll on the 5th of June?

A. Most of them were.

Q. And yourself? A. No.

Q. What percentage were men who had been on the payroll in June?

A. I really would not know.

Q. Would you hazard an estimate?

A. You understand the construction crews were going right through there; and I was arguing with Mr. Webb at the same time.

Q. But some of the men had been on the payroll on June 5?

A. One of the men I can recall now; he was in the line-up.

Q. Is it possible there were more? [354]

A. That were on the payroll?

Q. Yes. A. Yes. [355]

ORLIE W. HANEY,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination [376]

Q. When did you start to work in the 1939 season, do you recall approximately? [379]

A. I guess the latter part of May.

Q. You say you worked part of that year in 1939? A. Yes, sir.

Q. Was that work interrupted somewhat after you began your work?

A. Well, yes; I was bothered by a lame back and I came down and got some treatment and went back and worked one more day and my back went haywire again and I came back to town again.

Q. When did you first suffer this back injury?

A. I imagine the last week in May.

Q. And you were off for a week?

A. A couple of days or three days—two or three days.

Q. Do you recall the incident of a Union meeting being held in camp?

A. No; I was not there.

Q. You were not there? A. No.

Q. Did you learn such a meeting was held?

A. I was told so.

(Testimony of Orlie W. Haney.)

Q. Now with reference to the time when the Union meeting was held, when was the last date you worked before the trouble required you to quit?

A. The last day I worked before this was—before this so-called meeting was on Monday, the 5th of June.

Q. Did you work all that day? [380]

A. Yes.

Q. Where were you staying during this time when you were working in the 1939 season?

A. At the camp.

Q. Did you stay in camp that night of the 5th?

A. Yes.

Q. Did you work the day of the 6th?

A. No.

Q. What happened?

A. I asked Mr. Robinson if I could come to town that morning to get some more treatment and he said I could.

Q. Did he say anything further about your taking treatment?

A. He said I could take a whole week if necessary and then I would be good for the rest of the summer.

Q. Did you work the day of the 6th?

A. No. [381]

Q. After this date when did you next resume your employment?

A. I went to work on the dam on the 29th of August.

(Testimony of Orlie W. Haney.)

Q. How did that come about?

A. Well, Frank Robinson ordered, sent word to Sand Point with Jim Savage and a Mr. Jones (the carpenter) to have me come up next morning to the dam.

Q. Did you go to the dam? A. Yes, sir.

Q. Did you see anyone there?

A. I saw several there.

Q. Who did you get to see on that morning?

A. I didn't see Mr. Robinson but Mr. Brown was there and I told him that Frank sent for me to come up there and go to work, and I didn't see him any place, and he said he would put me to work.

Q. Did he? A. Yes, sir.

Q. What at?

A. To help build a bridge first.

Q. After the bridge building job, what did you do next? A. I worked on the dam. [386]

Q. That is the actual construction of the dam?

A. Mostly chopping and dragging stuff to the landings.

Q. Who directed you on your work on the dam construction and on the bridge construction?

A. Well, on the bridge it was Mr. Breen and when we got on the dam, why, the biggest part of my orders I think I got from the carpenter, Mr. Jones.

Q. After the dam construction work, what did you do? A. I built some truck landings.

(Testimony of Orlie W. Haney.)

Q. How did you start to work on the truck landings?

A. Mr. Breen said that Mr. Robinson was going to have us do those truck landings.

Q. Mr. Breen is the one who transferred you to the truck landings, is that the situation?

A. Yes, sir.

Q. Did you build the truck landings?

A. Yes, sir.

Q. Under his directions?

A. The first ones.

Q. Who selected the sites for the truck landings?

A. Well, I guess the site was already there and Mr. Breen staked them out.

Q. Was there any surveying done or platting done or laying out of the site?

A. Well, we made and put stakes where the skid landings were [387] supposed to be but the landing itself was already laid out and smoothed up somewhat before that by the builder.

Q. The ground had been prepared before you went over there?

A. Yes, sir.

Q. I see; now what occurred after you got the first landing constructed?

A. Well, Mr. Robinson came along and looked at it and he said, "Who built that?" And I said, "We did."

Q. Did he say anything to that?

A. He said it was a hell of a looking rig. Well, I said, "What are you going to do, when a man

(Testimony of Orlie W. Haney.)

stands over you and tells you what to do and when he thinks it good enough?"

Q. What did he say?

A. He wanted to know who it was and I said it was Mr. Breen.

Q. Did you build more landings after that?

A. He said to me and the fellow Jim Savage working with me, he said, "Can you build a truck landing?" And we said we could and we were sent down there and we went down there and built one.

Q. Who sent you down?

A. Mr. Arden Davis. , And when we got back to build, we got back to the one that Mr. Breen had us build; and he had us build it all over.

Q. Who was the "he" you mentioned?

A. Mr. Robinson. [388]

Q. During any of this time when you were engaged on the dam construction work or bridge construction work or the landing construction work, did you see James Brown, Jr. at the dam site?

A. He was there at different times.

Q. Did you have any conversation with him?

A. No, not any conversation.

Q. Did he direct you in your work?

A. Just once.

Q. On what was that?

A. He had us go and finish a toilet which was started up before this day; and that is all.

Q. Who was your teamster or driver while you were doing this construction work?

(Testimony of Orlie W. Haney.)

A. Jim Savage.

Q. Were there any days when Mr. Brown, Jr. gave any directions to you when you were up there other than you have mentioned?

A. Yes, he had me go and pull on some stake trucks and skid some logs they had to handle before going to the unlanding place.

Q. After the dam was constructed, did anything occur to it at any time?

A. After they built it the first time, one end of it washed out. [389]

Q. What occurred at that time?

A. I and Mr. Savage were the first ones there and I went to Colburn and called up the camp and told Mr. Robinson about it.

Q. Did you talk to Mr. Robinson on the phone?

A. Very little; I told him what had happened and he said he would be up there right away.

Q. Did he go down there? A. Yes.

Q. After he arrived at the dam did you have a conversation with him? A. Not much.

Q. What was said?

A. Well, we figured around there awhile and he said we might as well go home and he would not do anything with it until the company saw it; and when we were wanted he would come and get us.

Q. Did you go home? A. Yes.

Q. Were you later called back?

A. Yes, sir.

Q. Was the dam reconstructed?

A. Yes, sir.

(Testimony of Orlie W. Haney.)

Q. How long did you continue working during the 1939 season?

A. I worked until the 20th of November. [390]

Mr. Walker: That is all.

Cross Examination

Q. (Mr. Potts) Mr. Haney, when was the last work you did in the Caribou Basin logging operation? A. In 1939; the very last?

Q. Yes; the very last.

A. It would be about the 19th or the 20th of August.

Q. What was the nature of that work?

A. Skidding poles and handling a few logs.

Q. That was as far as you were concerned, at least in the cleaning up of your skidding of the poles and logs?

A. Yes, there were a few here and there all through the woods which we went around and fixed up.

Q. And then you were laid off from that type of work on or about the 19th or the 20th of August? A. Yes, about there.

Q. How long was it before you started work over on the dam? A. The 29th of August.

Q. The 29th of August? A. Yes, sir.

Q. So you were laid off for possibly ten days?

A. Yes, sir.

Q. At the time your work ceased in the logging operation, about the 19th or the 20th of August, was there any arrangement made with you for any further work during the season? [391]

(Testimony of Orlie W. Haney.)

A. Only as he stated; he wanted to use the team on the dam and was going to have me drive it, that is all.

Q. Mr. Robinson said later on he was going to have use for a team on the dam and would want you to drive it? A. Yes, sir.

Q. He didn't say when that was going to occur? A. No, not necessarily, no.

Q. He just didn't say when it was going to occur, did he?

A. I think he did say it would not be very long.

Q. You think he said it would not be very long? A. I think so.

Q. What did you do when you left the logging operation on the 19th or the 20th of August, where did you go?

A. I came home and remained home.

Q. Did you remain here until you were instructed to report at the dam for work?

A. Yes.

Q. When did you get your instructions to go to the dam?

A. The evening before I went the next morning.

Q. Who gave them to you?

A. Jim Savage told me first.

Q. Who is Jim Savage?

A. A man who was driving the team up there, and when I got home I heard the boss carpenter

(Testimony of Orlie W. Haney.)

had told the folks to tell me Mr. Robinson wanted me at the dam the next morning. [392]

Q. Was the next morning Monday morning, do you recall?

A. No, I think it was Tuesday morning.

Q. So you then, on the strength of that information which you had received, you went to the dam the following morning?

A. Yes, sir.

Q. You reported for work?

A. Yes.

Q. To whom did you report?

A. I think to Mr. Breen; Mr. Robinson wasn't there.

Q. To whom did you report?

A. Mr. Breen.

Q. You didn't see Mr. Robinson at that time you reported on arrival?

A. Not then.

Q. You did see Mr. Breen?

A. Yes.

Q. Did you know Mr. Breen before that time?

A. Yes; just when I saw him, that is all.

Q. Did you know who he was, what his connection was with the Long Lake Lumber Company?

A. Nothing any more than he was always supposed to be one of the company; I never talked with him.

Q. You had seen him around the woods, hadn't you?

A. Yes.

Q. And especially with respect to the road and branch construction in con- [393] nection with that type of work?

(Testimony of Orlie W. Haney.)

A. I had not seen him but very little in the woods.

Q. You did know he was connected with the Long Lake Lumber Company? A. Yes, sir.

Q. You also knew the Long Lake Lumber Company was building or having this dam built, didn't you? A. Yes, sir.

Q. So you went and reported to Mr. Breen, and did he direct you what work to undertake?

A. He needed me and he told me to help with the building of that bridge first and then one noon came and told me to work on the dam in the afternoon.

Q. Was the dam itself in the course of construction then? A. It was.

Q. About how far along?

A. Not very far, they were just—you might say most of the bottom logs were cut.

Q. You first worked on the bridge?

A. Yes.

Q. And when that was completed you worked on the dam?

A. No, it wasn't completed, we just worked there until noon.

Q. And then you went to work on the dam?

A. Yes, sir.

Q. Did you work on the dam at all?

A. Yes.

Q. Until it was finished? [394] A. Yes.

Q. Had the construction of the landings been

(Testimony of Orlie W. Haney.)

commenced, landings for handling of logs been commenced before the dam was completed?

A. I don't know; they might have been working on them a little bit before the end of the dam washed out; I don't know whether that did or did not commence.

Q. Did the end of the dam wash out soon after it was finished? A. Yes.

Q. And at that time were you engaged at work on the construction of the landing or had you finished?

A. I don't know, I won't say whether we started on them or whether the dam went out after a part of it was completed.

Q. When you did go from working on the dam it was to work on the construction of the landings and you then continued on that line of work from that time on?

A. Not quite all the time; they took us off a few different times; they took us off the crew to keep the logs out of the way.

Q. Was it the landing you referred to when you mentioned getting instructions from Mr. Breen as to one of them? A. Yes, sir.

Q. And following his instructions?

A. Yes, sir.

Q. You built the landings according to the instructions he [395] gave you?

A. No, just the first one; the first one I was talking about.

Q. The first one you were talking about?

(Testimony of Orlie W. Haney.)

A. We built it the way he told us to.

Q. That is the one that Mr. Robinson did not approve of when he saw it? A. Yes.

Q. And Mr. Robinson instructed you to build—to build as you thought they should be built?

A. Yes.

Q. Was Mr. Breen around there at the time or had he left?

A. He wasn't there very much.

Q. Had he left; was he around there until afterward?

A. We saw him around there two or three different times anyhow.

Q. Did he say anything about the change in the instructions on the construction of the landing?

A. No, sir; not to me.

Q. You went right ahead and built the rest as you thought they should be built? A. Yes.

Q. About how many landings did you construct?

A. About fourteen.

Q. How were they constructed?

A. Out of timber—logs. [396]

Q. Out of logs. And their purpose is what, what are they built for? What are they used for?

A. They are built to unload the logs off the trucks and they were to be plenty long enough to hold a truckload so they could be scaled before being put into the water.

Q. Landings are places provided for unloading of logs from the trucks where they are all hauled in from the woods? A. Yes, sir.

(Testimony of Orlie W. Haney.)

Q. Before they are dumped into the pond?

A. Yes, sir.

Q. Where is this dam, Mr. Haney?

A. About a mile east of Colburn.

Q. Where is Colburn?

A. About nine miles or nine and a half miles away.

Q. Are you sure the direction is east or north?

A. It is not north, it may be northeast; they call it east.

Q. It is on Colburn Creek? A. Yes.

Q. That is where the dam is constructed, on Colburn Creek? A. Yes.

Q. And it is designed to furnish a pond for logs; it is a logging pond? A. A storage pond.

Q. For the purpose of the storage of logs?

A. Yes, sir. [397]

Q. Do you know how far that dam is from the logging camp in the Caribou Basin?

A. It must be thirteen or fourteen miles from where they haul from the camp.

Q. From the camp of the Caribou Basin to the dam and storage pond at Colburn is about thirteen or fourteen miles by road?

A. Yes, sir; I think it is something like that.

Q. Did you see any other officers or representatives of the Long Lake Lumber Company at this dam during the course of its construction or while the landings were being built?

A. Mr. Brown, Sr. was around there two or three different times.

(Testimony of Orlie W. Haney.)

Q. As a matter of fact he was up there several times, wasn't he?

A. He might have been there, too, when I didn't see him.

Q. You saw him several times?

A. Yes, sir.

Q. So he was up there several times?

A. Yes, sir.

Q. And when he was up there, he overlooked the work which was being done pretty carefully?

A. Yes.

Q. You know he did, don't you?

A. I don't know whether he looked carefully or not. [398]

Q. Didn't you see him spending some time there?

A. Yes, sir.

Q. And you saw Mr. Brown, Jr. there a number of times too, didn't you? A. Yes.

Q. And you knew that both Mr. Brown, Sr. and Mr. Brown, Jr. were very much interested in the construction of that dam and pond and the landings, didn't you? A. Yes.

Q. You also knew it was being constructed for the Long Lake Lumber Company for the logs?

A. Yes. That is what they always said when I talked to anybody.

Q. It was to serve that purpose for a number of logging operations?

A. I heard nothing about anybody but the Long Lake Lumber Company.

Q. I mean a number of Long Lake Lumber Com-

(Testimony of Orlie W. Haney.)

pany logging operations, different operations they had.

A. Yes, sir.

Mr. Potts: That is all.

Redirect Examination

Q. (Mr. Walker): From whom did you receive your check when work on the dam was being done?

A. From Mr. Robinson. [399]

Q. When did you recover from your back injury?

A. A couple or three treatments is all I had to take; and then I was all right.

Q. You were able to resume your employment within two or three days after the time you asked Mr. Robinson if you could go away for some treatments, is that correct?

A. Make it a week; I would be perfectly all right in a week. [400]

Redirect Examination

Q. (Mr. Walker): Are you a member of any labor organization?

A. Yes, sir.

Q. What organization?

A. Well, the I. W. A., whatever they call it, which is the C.I.O.

Q. Did you sign a card which is a part of what is marked as Board's Exhibit for identification No. 5?

A. I signed a card.

Q. Referring to Board's Exhibit No. 5 for identification, and the card thereof, bearing the signature O. W. Haney, is that your signature?

A. Yes, sir. [403]

GREGORY MOORE,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination [404]

Q. Referring to what has been marked Board's Exhibit 5 for identification I hand you herewith a card taken therefrom and signed "Greg Moore". I will ask you if it is your signature?

A. It is.

Q. Was the card which you hold in your hand signed upon that date? A. Yes, the date.

Q. The date it says? A. Yes.

Q. After the time when you signed that card, did you have any contact with any of the other employees? A. Yes, sir.

Q. And how did you come to make those contacts?

A. Well, I took a bunch of cards to camp and signed up everybody who wanted to sign up.

Q. About when was that with respect to the time you signed that card?

A. It was afterwards.

Trial Examiner Hektoen: How much after—right away?

The Witness: Right away.

Q. Do you remember the incident of the camp closing on June the 7th? A. Yes, sir.

Q. Did you work the preceding day?

A. No. [408]

Q. What occurred?

A. I got canned that morning.

(Testimony of Gregory Moore.)

Q. How did that come about?

A. I don't know.

Q. Did you have any conversation at the time?

A. No.

Q. With anyone? A. No.

Q. How did you know you were canned?

A. Mr. Robinson was standing at the office door and I walked in there and he said, "Make it out for the whole crew; the whole jammer crew." That is what I heard.

Q. Did you receive a check at that time?

A. Yes.

Q. Was the check made out in full for your earnings to that date? A. It was.

Q. And were the other individuals on the jammer crew, Ralph Peterson and Ted Early and Bill Henry?

A. Bill Henry was not canned; his check was not made out.

Q. During this time were you staying at the camp? A. I was.

Q. Had you worked the day preceding, June 6?

A. Part of it.

Q. What occurred? [409]

A. The jammer broke down.

Q. About when was that?

A. About 9:30 in the morning.

Q. When it broke down what did you do?

A. I came in and told Frank Robinson.

Q. And what did he say when you told him?

(Testimony of Gregory Moore.)

A. He said he would see Kenneth Critchell and see what he could do about it.

Q. Did he give you any further instructions at that time? A. No.

Q. After you got your check on this day, June 6, what did you do? A. I came downtown.

Q. You came to town? A. Yes, sir.

Q. After having left the camp on this date, June 6, did you return to camp at any time?

A. Yes, I heard there was to be a meeting that evening and I went back up.

Q. To the camp? A. Yes.

Q. And when was it you went up?

A. We got there about 4:30, I have an idea.

Q. Who is "we"?

A. Ralph Peterson, Ernest Johnson and myself and Ted Early. [410]

Q. Did you see anybody when you arrived at camp?

A. Leon Wise and Mr. Robinson were talking there and Mr. Robinson's car was in front of the cookhouse.

Q. This is as you drove up?

A. Yes, as we got to the camp; yes, sir.

Q. Did you talk to Mr. Robinson at the time?

A. Yes, sir.

Q. Where was this jammer of yours working with respect to the main camp at the time it broke down?

A. On the Hell Roaring Road, they call it; it was the main road out of camp.

(Testimony of Gregory Moore.)

Q. Was it above camp or below camp?

A. It is right straight out past there.

Q. Does the road extend beyond where you were working?

A. Yes, sir.

Q. Were there any logs being hauled at that time from your jammer?

A. No.

Q. How long had your jammer been in operation at that time?

A. About a week.

Q. Was any road work being done either between the point where your jammer was located and the camp or between the point where your jammer was located and on past it?

A. Well, the road above the one where we were on and closer to camp, that was being worked on by a bulldozer. [411]

Q. When you finished work on the cedar did you resume work on logs immediately?

A. Yes.

Q. Was there any interval between there during which time you didn't work?

A. Well, there were a couple of days.

Q. And during those days where did you stay?

A. At home.

Q. Where?

A. At home, in town.

Q. At the conclusion of the cedar work, were you paid off in full for that cedar work?

A. Yes, sir.

Q. Now when you arrived at camp at 4:30 on the evening of June 6th, what did you do?

A. I went down to the bunkhouse where the meeting was to be held.

(Testimony of Gregory Moore.)

Q. Did you attend the meeting? A. Yes.

Q. Was any action taken at that meeting with respect to a conference with Mr. Robinson?

A. Yes.

Q. What was it?

A. Well, I can't recall just what it was; I know there was some kind of form drawn up. [412]

Q. Have you held any semi-official or official positions in the local since you signed your card?

A. I was on a committee.

Q. When did you assume that committee work or when did you assume that committee work?

A. At the meeting.

Q. Who else served on the Committee with you?

A. Leon Wise and Mr. Kirtley and Mr. Stevens and Mr. Hanson—no, he was not on the Committee there; Slim Burford, I believe it was.

Q. What did the Committee do after it had been formed?

A. They went and met with Mr. Robinson.

Q. Where was that meeting?

A. At the office.

Q. Did anyone accompany the Committee to Mr. Robinson's office? A. Yes, Mr. Johnson.

Mr. Hunt: Who?

The Witness: Mr. Johnson.

Q. (Mr. Walker) What did the Committee say to Mr. Robinson as it convened in the office there?

A. Mr. Johnson said, "This is the Committee representing the workers in this camp; and will

(Testimony of Gregory Moore.)

you recognize these men as a committee?" And Mr. Robinson said, "I don't know."

Q. Did he ask for recognition? [413]

A. Yes.

Mr. Hunt: What did he say? And I want to know to whom counsel is referring, whether who asked?

Trial Examiner Hekton: Was it Mr. Johnson?

The Witness: Mr. Johnson, yes.

Q. (Mr. Walker) Did Mr. Robinson answer Mr. Johnson? A. Yes, he did.

Q. Do you recall what he said?

A. Well, he said; he agreed to recognize that Committee representing the majority of the workers.

Q. Did the Committee present any other message to Mr. Robinson at the time? A. Yes.

Q. Do you recall what they were?

A. They wanted up a fixing up of the camp, with a bull-cook; a re-hiring and cedar makers and the crew.

Q. One moment. The Committee presented Mr. Robinson with a demand for the re-hiring of the cedar makers; was that the situation?

A. Yes, sir.

Q. What did Mr. Robinson say in that regard referring to the cedar makers?

A. He said there were a couple of cedar makers who did not do anything else.

Q. Did he mention anyone? [414]

(Testimony of Gregory Moore.)

A. Well, Long Axle, that is the only one I remember; that is the only one I remember.

Q. What was the talk or the discussion concerning the bull-cook and the fixing up of the camp; did you mention anything else?

A. The re-hiring of those men.

Q. Before we go on to the re-hiring of the men, what did Mr. Robinson say with respect to the Committee's demand in regard to the fixing up of the camp and the matter of the bull-cook?

A. He agreed to do it.

Q. What was the nature of this demand of the Committee concerning the re-hiring of the old men?

A. Well, he said he always hired the old crew.

Q. Who said that? A. Mr. Robinson.

Q. What was the position Mr. Robinson took relative to that demand on the re-hiring of the old men? A. I don't understand you.

Q. Did he have any objection to such a demand of that type? A. No, he didn't.

Q. Can you recall whether there was anything further than the matters which you have covered: the cedar-makers, the re-hiring of the old men and a fixing of the camp and the bull-cook? [415]

A. And the re-hiring of the jammer crew which was fired.

Q. Do you remember that? A. Yes, sir.

Q. What was said about it?

A. He said he never canned them; he never canned us.

Q. What was the discussion about that?

(Testimony of Gregory Moore.)

A. He said he just let us off. We got our checks, I know.

Q. Did you take part in any of the discussion regarding the laying off of the jammer crew?

A. No.

Q. What position did Mr. Robinson take relative to this demand for the re-hiring of the jammer crew?

A. He agreed to do it.

Q. After the Committee met with Mr. Robinson, what did you do?

A. It went back and reported to the men.

Q. After the Union meeting had broken up, what did you do?

A. I went back to town.

Q. Before you left for town did you do anything further up around the camp there?

A. We went to the cookhouse and signed up the cookhouse crew.

Q. Who are "we"?

A. Mr. Johnson and myself.

Q. After you had signed up the cookhouse crew, what did you do? [416]

A. That is when we left for town.

Q. Did you see Mr. Brown, Jr. there at any time?

A. Yes, I saw him.

Q. When was that with respect to the conclusion of the Union meeting?

A. It was after the second meeting.

Q. Where was it you saw him?

A. He was up in front of the office talking to Mr. Robinson.

Q. Was Mr. Robinson around there?

(Testimony of Gregory Moore.)

A. Yes, sir.

Q. Was there any conversation between Mr. Brown, Jr. and Mr. Robinson at that time?

A. They were talking, but I could not hear them, what was said. [417]

Cross Examination

Q. Mr. Hunt) Did the Committee all go there with Mr. Johnson or did you go in one at a time? [421]

A. It is a small door to go in and we went in one after the other.

Q. You went into the place in a group?

A. We were kind of strung out.

Q. After you got in there you had your conversation and you all left together; is that correct, one by one, through the door? A. Yes.

Q. And from the time you went in there and left you heard all the conversation? A. Yes.

Q. At that conversation did Mr. Johnson say you represented the men, that you were the Committee? A. He did.

Q. Did Mr. Robinson ask you if the camp was organized? A. I believe he did.

Q. And did Mr. Johnson volunteer that information? A. Yes.

Q. Did he state how completely the camp was organized?

A. No, he said it was organized.

Q. Were you in the courtroom all the time while Mr. Leon Wise testified?

A. No, not all the time.

(Testimony of Gregory Moore.)

Q. Mr. Robinson knew last summer that you had signed up as a member of the I.W.A.? [422]

A. I suppose so.

Q. As a matter of fact you were on a Committee and talked with him many a time, representing the Committee? A. Yes.

Q. You went back to work for Mr. Robinson on the 18th of July? A. Yes.

Q. And worked for him for how long?

A. To about the 13th of August.

Q. Did you work for him any after the 13th of August? A. No.

Q. When the jammer broke down were you able to operate with it in its broken condition?

A. No.

Q. What happened to the jammer, what happened to it?

A. The rear end of the hoist broke.

Q. That is rather serious for a jammer, isn't it?

A. It would have to be taken off and have it fixed probably.

Q. Would the parts broken require new parts to put it back into working condition?

A. No. They were the old parts used, it was a Model T rear end.

Q. Did any of those parts break when the rear end went up?

A. It was never torn apart while I was there.

Q. You saw it broken down? [423]

A. Yes.

Q. And the rear end went up? A. Yes.

(Testimony of Gregory Moore.)

Q. Was there anything broken among the parts?

A. We never took it apart; but it was something in the rear end.

Q. You never saw the jammer afterwards?

A. It was never fixed while I was there.

Q. They got another jammer? A. No.

Q. At that conversation Mr. Robinson stated that you had not been canned and were let out because the jammer broke down, and there was no further work to be done at that time?

A. Yes, that is it.

Mr. Hunt: That is all.

Trial Examiner Hektoen: Any redirect, Mr. Walker?

Mr. Walker: No, I have nothing.

(Witness excused.)

ARMON GARVIN,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker) What is your name?

A. Armon Garvin.

Q. You reside in Sand Point? [424]

A. Yes.

Q. What is your occupation?

A. Woodsman.

Q. Have you ever been employed at Caribou?

A. Yes.

(Testimony of Armon Garvin.)

Q. When did you first work there?

A. I started there in 1936, June the 29th.

Q. Doing what?

A. Constructing a bridge.

Q. How long did you work on the bridge job?

A. I think it was about a month.

Q. After that what did you do?

A. I started in on the buildings.

Q. What buildings were they?

A. The cookhouse and the bunkhouses.

Q. The main camp? A. Yes, sir.

Q. And under whom did you work on that job?

A. Under Mr. Robinson.

Q. Was he the only one who directed you in your work?

A. Mr. Brown told me a few things to do there too.

Q. That is Mr. Brown, Sr.? A. Yes.

Q. What was the nature of your work on the camp buildings, were you the head carpenter or crew boss or what was it; were [425] you just a laborer?

A. I suppose properly speaking, I would be a carpenter.

Q. Who directed you on the work of construction, for instance, the cookhouse, how that would be done?

A. I think Mr. Robinson did.

Q. Mr. Robinson showed you where the site was?

A. Yes.

Q. Did you have any discussion with anyone

(Testimony of Armon Garvin.)

concerning the type of structure you were building? Or the size?

A. Just with Mr. Robinson.

Q. And did you work on the cookhouse until it was completed? A. Yes, sir; we did.

Q. After you worked on the cookhouse what structure did you take up next?

A. I think it was the bunkhouses then.

Q. Who did you confer with over the matter of the site for the bunkhouses?

A. Mr. Robinson.

Q. Mr. Robinson?

A. No; mostly Mr. Breen directed my work,—where to put one.

Q. With whom did you confer in the matter of the size and type of structure to build?

A. With Mr. Robinson.

Q. What was this talk you had with Mr. Brown, Sr. during [426] the course of the construction?

A. On the roof.

Q. Which roof?

A. The cookhouse roof; it has a 20-foot span on the lumber and he thought I should have put the short piece I had there at the top on the bottom; and I said I did not see where it made any difference.

Q. In other words the lumber would not reach the full reach?

A. He thought it would not reach the full length, you see.

Q. What was the rest of the conversation?

(Testimony of Armon Garvin.)

A. I think that was all about that.

Q. In conjunction with the construction of the cookhouse was there anything else constructed other than the building which is connected with it?

A. Yes, there was a septic tank built on the back end of the cookhouse.

Q. Was that work concerned with the cookhouse which came under your jurisdiction as a carpenter?

A. Yes.

Q. Did you have any conversations with anyone concerning that septic tank?

A. Yes, I did. Mr. Brown asked me who put the men to work here and I said I did and he said, "They are not doing anything, and I am going to Frank and get rid of them," which he did. [427]

Q. The men were working at the septic tank at that time? A. Yes, two of them.

Q. Were the men gotten rid of? A. Yes.

Q. During the construction of the bunkhouses did you have a discussion with anyone other than Mr. Robinson relative to the dimensions or type of structure?

A. Well, Mr. Breen ordered the dozers in there and showed me where he placed the last one and ordered a bulldozer to clear off the ground where they built the bunkhouse.

Q. What type of roof did you have on the bunkhouse? A. We had a half-hitch hook.

Q. Did you confer with anybody about the type of it?

(Testimony of Armon Garvin.)

A. Yes, Mr. Breen told me to cut the rafters half a hitch.

Q. Did you? A. Yes.

Q. In the 1936 season, were you engaged as a carpenter throughout the season?

A. Yes, sir.

Q. After the '36 season did you work again up there?

A. I took a small crew of men in 1937 and piled Mr. Robinson's brush.

Q. Who did you confer with about obtaining that job? A. Mr. Robinson.

Q. Is that the only type of work you did in 1937? [428] A. Yes; I think so.

Q. Did you work in 1938? A. Yes, I did.

Q. What doing?

A. I started in with Earl Davis.

Q. Doing what?

A. Making a few posts, and then I, after I got through with him, I went back to work for Mr. Robinson.

Q. From whom did you receive your check at the time you work with Mr. Davis?

A. Mr. Robinson.

Q. How long did you continue on the cedar work, approximately?

A. Cutting cedar logs?

Q. Yes.

A. I worked until March. I started in about November, I think, and worked until March, 1938, I believe.

(Testimony of Armon Garvin.)

Q. After that brush was piled what was done with it? A. It was burned then.

Q. Was the brush which you had piled burned? [431]

A. Yes, sir.

Q. That fall? A. Yes, sir.

Q. Who burned it?

A. Well, Boyd Stevens and I were ordered to burn the brush.

Q. Who told you to?

A. Mr. Bob Gillespie, he told us to burn the brush.

Q. And he told you where to burn; that is, what spot to burn it on when to burn?

A. Bob Gillespie told us where to burn and told Stevens and I that we were to take our orders from him and nobody else.

Q. Who selected the men who piled the brush for you?

A. On the green brush, I selected my own men.

Q. Who worked with you on the dry brush?

A. The same crew.

Q. How long did this burning business last?

A. I would say about thirty days, maybe a little more.

Q. At the end of the piling job—I don't know whether this was green brush or dry brush or whether it makes any difference, did you receive any directions as to when it was to conclude, or anything in that regard?

A. Yes, after we started on the dry brush, why,

(Testimony of Armen Garvin.)

there was about two weeks of that and we still had some of this green brush to burn yet; and after we finished the dry, we started on the green then again; and I had to send to town and get [432] more men; and in the meantime Frank came to the bunkhouse where I would see him and he told me to cancel the order for the men because Mr. Brown was going to shut it down. That was the end of the season.

Q. Was it in 1938 when you were working on this Hell Roaring Creek road job?

A. Yes, it was. [433]

Q. Did you see anybody that morning at all.

A. No. I saw young Jimmie; he came over to the crew and told us the camp was shut down, and Mr. Robinson was through.

Q. Just one question more: Are you a member of any labor organization?

A. Yes, sir; the C. I. O.

Q. Connected with the I. W. A., Local 119?

A. Yes.

Mr. Walker: That is all. [436]

Redirect Examination

By Mr. Walker:

Q. Had you worked for Mr. Davis on the cedar work prior to the time you burned the cedar brush?

A. Yes, sir; I had. [452]

Q. By whom were you paid when you worked for Mr. Davis; who did you get your check from?

A. He gave me an order on Mr. Robinson.

Q. You got your checks from Mr. Robinson?

A. Yes, sir.

(Testimony of Armon Garvin.)

Q. How did you get paid or by whom when on the Hell Roaring Creek trail work?

A. Mr. Robinson paid me.

Q. When you were doing the camp, the building work, from whom did you receive your check?

A. Mr. Robinson. [453]

CLYDE SMITH,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Do you live in Sandpoint? A. Yes, sir.

Q. And your name is Clyde Smith?

A. Yes, sir.

Q. Your occupation is that of logger?

A. Yes, sir.

Q. Did you ever work at Caribou?

A. Yes, sir.

Q. When did you first begin to work there?

A. 1936. [458]

Q. Mr. Smith, does the term "bring in your tools" have any significance among loggers?

A. Yes.

Q. What is it?

A. It means you are through.

Q. Do you remember the incident of the camp closing down in the forepart of June, 1939?

(Testimony of Clyde Smith.)

A. Yes.

Q. About when was it, when was this time when you rode up with Mr. Robinson with respect to the day on which the camp was closed down?

A. June the 5th, I believe.

Q. That was the day you——

A. (Interrupting) Monday morning.

Q. The day you rode up with Mr. Robinson?

A. It was in the afternoon.

Q. How do you fix that date in your mind?

A. Well, I worked that afternoon and the next day the camp was shut down, the next morning.

Q. How long had the cat been at camp before this time when you went up there to work on it?

A. About a week, I guess.

Q. During that interval at any time did you see Mr. Brown, Jr., at camp? A. Yes. [472]

Q. Did you have any conversation with him?

A. Yes.

Q. Prior to the June the 5th, the day you went to work on the cat, had you had any time to operate the cat? A. Yes, I operated it.

Q. Go ahead and relate the conversation you had with Mr. Brown, Jr.

A. I was up at the office and he came in and he said, "You started that cat down there." I said, "Yes." He said, "Come on down, I want to see how it operates." And we went down and I started it up and showed him how it run, and he went back to the office.

(Testimony of Clyde Smith.)

Q. Did you show him how to operate the levers and all that stuff? A. Yes.

Q. Did you move it? A. Yes.

Q. Was there anything further said between you and Mr. Brown, Jr., during this conversation?

A. Yes.

Q. Will you go ahead and relate what else was said?

A. He backed up and said, "I hope that rig is all right."

Q. Did you attend a meeting at the camp prior to the camp shutting down? A. Yes. [473]

Q. How did you learn there was to be a meeting?

A. Mr. Wise told me.

Q. And about when was it that you learned that?

A. That was about three o'clock in the afternoon.

Q. Where were you at the time?

A. At the blacksmith shop. [474]

CLIFFORD J. GOOBY,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. What is your name?

A. Clifford J. Gooby.

Q. And you live in Sandpoint?

(Testimony of Clifford J. Gooby.)

A. Yes, sir.

Q. What is your occupation?

A. Lumberjack.

Q. Have you ever worked at Caribou operation?

A. Yes. [480]

Q. And do you remember the incident of the camp closing on June 7, 1939? A. Yes.

Q. And had your loading work been continuous since you first began loading logs in 1935 up to that time?

A. There was a period in the Fall of 1938 when Mr. Robinson took the job away from us for about a month.

Q. Excepting that your loading was continuous? [481]

A. Yes, there were no logs loaded at that time; he took the job away from us but nobody loaded any logs at that time. [482]

Q. How did you happen to do that loading when you first started in in the Spring of '39 over the C. I. and switch to the Great Northern?

A. Mr. Robinson and James Brown, Jr., came to the landing and said to go by the Great Northern; the next day, I believe it was, the 6th of June, to go to the Great Northern the next day and clean the landing off; we were going to fix the landing, repair it.

Q. Who told you to clean the landing off? [488]

A. I would say Mr. Robinson did.

Q. This is June the 5th?

A. I think it was the 5th or 6th of June.

(Testimony of Clifford J. Gooby.)

Q. About what time of the day was it?

A. About three o'clock. We didn't hear from him after that.

Q. Were any other directions given you to that time?

A. Mr. Brown, Jr., told me to order twelve cars from the Great Northern so we would have cars on both landings, and if short of cars on the S. I., we could load on the Great Northern.

Q. Did you do that? A. Yes.

Q. Were the cars delivered? A. Yes, sir.

Q. When? A. The next day.

Q. Did you work at any time during the day on which the camp closed? A. Yes.

Q. How did you learn that the camp had closed?

A. Well, there was a man came from the camp, I believe Clyde Smith, that he came over to the landing about one o'clock and told us the camp was closed and there was going to be a meeting in the camp and he wanted to know if we would come down to it. [489]

Q. At any time during the period the camp was closed down did you have a talk with Mr. Robinson? A. Yes.

Q. Do you remember the instance of a crew passing through the picket line with some State Police in attendance?

A. I wasn't there; I was in town.

Q. I want you to fix the event in your mind, do you know of the event? A. Yes.

(Testimony of Clifford J. Gooby.)

Q. When was your talk with Mr. Robinson with respect to when the recruited crew went through the picket line?

A. I believe I saw him there that morning.

Q. Where? A. At Sandpoint.

Q. Did you have a conversation with him?

A. Yes.

Q. What was it?

A. He told me they were going to start to work.

Q. Did you say anything to him?

A. I said to him that the jammer and the trailers were at Samuels and before we could load they would have to be put back on the landing where they could be loaded.

Q. Was that all the conversation?

A. Yes; he asked me if I would do it and I said yes, I would have them switched. That is all. No, I beg pardon, he [490] asked me where the landing men were, he asked me where the landing men were and I said I did not know where they were; I told him where they lived and he said he wanted to know if they would go back to work and he said, would I go and unload the truck? And I said, "No."

Q. Why wouldn't you go up there and unload the trucks?

Mr. Hunt: Objected to as immaterial.

Trial Examiner Hektoen: He may answer.

A. The year before that we were unloading the trucks and he took the job away from us and gave it to two other men and I didn't see any reason why I should go up there and unload the trucks.

(Testimony of Clifford J. Gooby.)

Q. And after this conversation did you have a later conversation with him? A. Yes.

Q. And about when was it, the next one, with reference to the one you just told about?

A. It was between five and seven o'clock.

Q. Where did the conversation take place?

A. At my house.

Q. What conversation took place?

A. He came and asked if the cars had been switched and I said yes. He said, "Are you going to load the logs?" I said, "No." I had been up there that afternoon and there was a picket line and I would not go through the picket line [491] to work.

Q. Did Mr. Robinson say anything further?

A. Yes, he said he would send the State Police down there with a gun and drive the picket line away.

Q. Did you say anything to that?

A. I said, "I don't care to work under the gun."

[492]

Cross Examination [499]

Q. Now, in connection with this incident when Mr. Robinson and Mr. Brown came to the landing, what was it Mr. Robinson told you about cleaning up the landing? A. What date?

Q. Wasn't it June 5th or 6th?

A. He said he wanted them landed on the Great Northern, Light Landing on the S. I. and wanted the logs taken off the landing. The skids were pulled out of shape.

(Testimony of Clifford J. Gooby.)

Q. When was that?

A. That was 1939.

Q. June the 5th or 6th, 1939? A. Yes.

Q. How long were they being hauled?

A. Three or four days.

Q. Were they dragged in or trucked in?

A. What we loaded were trucked in.

Q. Were there any logs left on the landing deck?

[512]

A. No.

Q. The logs had just been hauled three or four days? A. Yes.

Q. And they were not hauling very many during those three or four days, were they? A. No.

Q. Do you recall, don't you, the hauling hadn't really got started during the operation?

A. No.

Q. And the weather was extremely bad, wasn't it, wet? A. It was raining some.

Q. It was raining quite a lot?

A. Hardly that.

Q. You didn't let the weather interfere with your work at any time?

A. If they could haul them we would let them.

Q. Ordinarily the effect of the rain was what it had on the roads? A. Yes.

Q. During the rain did the trucks come in fully loaded? A. Yes.

Q. How many were brought in a day?

A. I think four trucks were hauling, and mak-

(Testimony of Clifford J. Gooby.)

ing two or three trips a day; four trucks were hauling.

Q. Making two or three trips a day; had they quit hauling; [513] had the hauling diminished any in the territory after the 6th? A. Yes.

Q. Of June?

A. No; they were hauling the same amount of trucks.

Q. The same truckmen? A. Yes.

Q. I don't remember, but you may know whether the logs which reached there and which were hauled there the three or four days, by what particular operation they got there, whether by the main road or by rail?

A. No, they were from the woods.

Q. Those logs were scaled on the landings?

A. Yes, sir.

Q. Just what stage, for my information, at what stage was the scale made as the logs came on the truck?

A. They were handled before, before they were loaded on the cars.

Q. They were unloaded from the cars to the roadway and scaled by the scaler working for the Humbird Lumber Company? A. Yes.

Q. And he scaled them and you loaded them on the cars with your jammer? A. Yes. [514]

Q. That was the custom and practice of scaling the logs and had been during the years up there at the landing? A. Yes.

(Testimony of Clifford J. Gooby.)

Q. And your compensation was based on that scale? A. Yes.

Q. I beg pardon? A. Yes, sir.

Q. You didn't know about this Union meeting on the evening of June 6 at Robinson's camp until after it occurred, did you? A. No.

Q. You were working at Samuels Siding on June 6, loading, were you? A. I believe so.

Q. Were you working on June 7 when someone came over and told you about the camp being closed down? A. Yes.

Q. Who was that? A. Clyde Smith.

Q. And were any logs being delivered that day?

A. I think one load came in that day.

Q. Who brought in that load?

A. I believe Jim Morrow.

Q. Who? A. Jim Morrow. [515]

Q. Didn't he tell you about the camp being shut down?

A. I don't know; I was running the rigging.

Q. Was it then you learned from Clyde Smith, you first learned about the meeting which was to be held?

A. It was maybe told me before; I don't remember.

Q. Did he tell you about it? A. Yes.

Q. Did he ask you to come?

A. No, he asked when we got done work to come in and go to the meeting when we got through. I didn't go to the meeting and I finished up the loading and came to town.

(Testimony of Clifford J. Gooby.)

Q. When did you quit work after that?

A. We loaded off and on during June in town.

Q. At Sandpoint?

A. Yes; on the Humbird job all through June.

Q. On the Humbird Lumber Company job?

A. We were loading for Mr. Robinson.

Q. You were loading for Mr. Robinson?

A. That is what I thought.

Q. And you got paid by him? A. Yes.

Q. And did you load them under the same arrangement, so much a thousand? A. Yes.

Q. (Trial Examiner Hektoen): On the same kind of flat cars? [516]

A. Yes. And with the same kind of rigging.

Q. (Mr. Potts): There is no question about who you loaded them for, is there?

A. No, not in my mind.

Q. You didn't go back to Samuels Siding to do any loading?

A. Not after the 7th of June.

Q. When did you next go back there, or did you go back at all? A. The 14th of July.

Q. When the camp opened up?

A. No, it did not open up for two or three days.

Q. Did you commence loading on the 14th of July? A. Yes.

Q. Did you go on the original basis?

A. I went back by the day.

Q. You went back by the day; that was pursuant to the arrangement made at the time you met Mr. Rayner? A. Yes.

(Testimony of Clifford J. Gooby.)

Q. And Mr. Robinson at the hotel?

A. Yes.

Q. And you continued throughout the season on that basis, didn't you? A. Yes, sir.

Q. When was it you went to Spokane trying to buy the stumpage? [517]

A. I don't remember the date.

Q. While the camp was shut down?

A. Yes, while the camp was shut down.

Q. And you bought it or made arrangements to buy it?

A. No, I didn't buy it then, I talked about it.

Q. You said you completed the arrangements on that. A. Not then.

Q. Did you later?

A. I went back again to see about it and finished the arrangements in Sandpoint.

Q. You completed the arrangements?

A. Yes; finally I did.

Q. Who was it mentioned about your resuming loading logs for Mr. Robinson?

A. When?

Q. What? A. When?

Q. During the conversation in Spokane what was said about loading operations?

A. Nobody said anything about loading operations for Mr. Robinson. They sold me the stumpage and I continued to load Mr. Robinson's logs; that is all there was to that. They had asked me if I would continue to load Mr. Robinson's logs if they sold me the stumpage and I said yes.

(Testimony of Clifford J. Gooby.)

Q. You have continued up to the present time to load logs [518] for Mr. Robinson?

A. No; the last time I worked was November 1st.

Q. When?

A. November 1st and I didn't work any more until March 6th or 7th.

Q. And that is this month?

A. This month.

Q. And you came back in March, 1940?

A. Yes, sir.

Q. And are working now? A. Yes, sir.

Q. Except while you are wasting time here in court? A. Yes, sir.

Q. Now, you don't know as a matter of fact whether those logs or the amount represented by this one check of the Long Lake Lumber Company which you testified about; you don't know where those logs came from, do you? A. Caribou.

Q. You know they came from Caribou?

A. Yes.

Q. Because you were not loading from any other place at any time?

Q. (Trial Examiner Hektoen): Is that the check which was signed by Dave Brown?

A. I think so. [519]

Q. (Mr. Potts): What was the amount of it?

A. \$735 or something like that; it was more than \$700.

Q. Is that the final settlement for the year?

A. Yes.

(Testimony of Clifford J. Gooby.)

Q. It was a check for final settlement?

A. Yes, for the month of October.

Mr. Potts: That is all.

Redirect Examination

Q. (Mr. Walker): Mr. Gooby, you said you went back to work in July? A. Yes.

Q. Pursuant to the arrangement made with Mr. Robinson and Mr. Brown, Jr. and yourself?

A. Yes.

Q. And it was two or three days after that arrangement before you went to work?

A. I started the same day.

Q. And it was two or three days after the camp reopened when you had the loading?

A. Yes.

Q. That is when it was? A. Yes.

Q. Who directed you in the matter of cleaning up all the landings and getting them ready for repair? A. Mr. Robinson. [520]

Q. These logs at the Y had come from Little Lightning Creek? A. Yes.

Q. You were paid by Mr. Robinson for that work? A. Yes.

Q. Who directed you to hire the crew the day before the camp closed down?

A. Mr. Jimmie Brown, Jr.

Q. Who carried the Social Security tax on your crew of seven men? A. Mr. Robinson.

Q. Who carried the hospital?

A. Mr. Robinson.

(Testimony of Clifford J. Gooby.)

Q. Were Social Security tax deductions made from the checks received by you? A. Yes.

Q. And was there any deduction made on hospital before you received a check for the crew?

A. Yes, sir.

Q. Did you carry workmen's compensation insurance on your crew? A. No.

Q. Who did it? A. Mr. Robinson.

Trial Examiner Hektoen: Is there anything further? [521] Mr. Raynor, is he the law enforcement attorney?

Mr. Potts: For the C.I.O.? I guess.

Trial Examiner Hektoen: He is not the sheriff?

Mr. Hunt: No, a law enforcement agent.

Mr. Potts: Commissioner of Law Enforcement.

[522]

No. 10368

United States
Circuit Court of Appeals
For the Ninth Circuit. 6

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LONG LAKE LUMBER COMPANY and F. D.
ROBINSON,

Respondents.

Transcript of Record
In Two Volumes
VOLUME II
Pages 349 to 700

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

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Labor Relations Board

CHARLES BRODINE,

called as a witness by and on behalf of the Board,
being first duly sworn, was examined and testified
as follows:

Direct Examination

Q. (Mr. Walker): What is your name?

A. Charles Brodine.

Q. You reside in Sandpoint? A. Yes.

Q. What is your occupation?

A. Well, since I have been here I have been
working in the woods. [523]

Q. When did you next resume work there?

A. In 1939.

Q. What did you do, or about when was this
when you began in 1939?

A. The latter part of May.

Q. What type of work did you do?

A. Swamper.

Q. Did you have a teamster you worked with?

A. Yes, sir.

Q. Who was it? A. Mr. Burford. [528]

Q. Do you remember the occasion of the camp
closing on June 7, 1939? A. Yes, sir.

Q. Do you remember a Union meeting being
held at camp? A. Yes.

Q. Did you attend that meeting? A. Yes.

Q. How did you learn that the meeting was to
be held that night?

A. He came to the bunkhouse and told us to
come to the meeting.

Q. Were you staying at the camp in the 1939
season? A. Yes.

(Testimony of Charles Brodine.)

Q. Did you work on the day of June 6, upon which day the meeting was held? A. Yes.

Q. Did you work the next day?

A. No more than bringing in our tools.

Q. What happened?

A. They told us to bring in our tools.

Q. Who told you that?

A. Mr. Burford told me; he said, "The boss said to bring in the tools." So we went and got them.

Q. After June 7, 1939, did you at any time work again at Caribou? [529] A. Yes.

Q. When did you next work there?

A. I don't remember the date; it was in July.

[530]

BOYD STEVENS [536]

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker) What is your name?

A. Boyd Stevens.

Q. You live at what place?

A. I have been batching it there this winter.

Q. Where is your residence?

A. Kootenai.

Q. Where is that with respect to Sandpoint?

A. It is two miles north of here.

Q. What is your occupation? A. Logging.

(Testimony of Boyd Stevens.)

Q. Have you ever worked at the Caribou camp?

A. Yes, sir.

Q. When did you first work there?

A. In 1936. [537]

Q. Do you remember the incident of the camp closing down in June, 1939, on June the 7th?

A. Yes.

Q. Did you work the preceding day?

A. Before the camp closed?

Q. Yes. [542] A. Yes.

Q. Where did you work that day?

A. What section?

Q. Yes. A. On Section 17.

Q. Were you staying at camp during this time in June, 1939? A. Yes.

Q. Do you remember the incident of the Union meeting that night or the night preceding the day the camp closed down? A. Yes.

Q. That evening did you see Mr. Robinson at all? A. Yes.

Q. About when was it you saw Mr. Robinson?

A. Just as we came in from work.

Q. Did you have a talk with him at that time?

A. He instructed us to go and get our tools; he was going to move us on to the other side.

Q. Is that what he told you? A. Yes.

Q. Did you get your tools?

A. After supper.

Q. Did you go to the other section the next day?

A. The camp was closed down the next day.

(Testimony of Boyd Stevens.)

Q. (Trial Examiner Hektoen) Then you didn't go to the other section? [543]

A. No.

Q. (Mr. Walker) How did you learn you were not to go to Section 20 the next day?

A. How did I learn?

Q. Yes.

A. That was my instructions. He said, just go and get your tools, and he would move me over to the other side next day.

Trial Examiner Hektoen: I think he misunderstood.

Q. (Mr. Walker) The next morning following the evening when the Union meeting was held did you see Mr. Robinson? A. Yes.

Q. Where did you see him that morning?

A. It was at the bunkhouse, out in front of the bunkhouse.

Q. Was anyone with you?

A. There was a group of men there, I think.

Q. Was there anything said at the time?

A. Since we had the instructions to go and get our tools, the camp was closed.

Q. Who gave that instruction?

A. Mr. Robinson.

Q. To whom?

A. I can't say for sure, not to me directly, but we had our tools in camp.

Q. (Trial Examiner Hektoen) Was all this said to the group [544] of men standing there?

A. I would not say for sure.

(Testimony of Boyd Stevens.)

Q. Were you there?

A. Yes, I was there.

Q. Were you alone with Mr. Robinson?

A. No, there were men going up and over the hill.

Q. Did he say that to you?

A. He didn't say it to me, it was the talk of the fellows.

Q. You heard him say it to someone?

A. I don't remember whether I did or just how that was.

Q. He didn't say anything directly to you?

A. He didn't say anything directly to me.

Q. How did you understand the fellows were to get their tools and go out?

A. It was the talk of the fellows.

Q. Did they say how they heard it?

A. No, they said those were the instructions, that they were going to shut the camp down on account of the rainy weather.

Q. (Mr. Walker) During the time the camp was shut down did you do any work? A. Yes.

Q. How much time intervened between when the camp shut down and when you next went to work?

A. Two weeks. [545]

Mr. Walker: That is all. [546]

ARTHUR BURFORD,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker) What is your name?

A. Arthur Burford.

Q. You are the individual they call "Slim"?

A. Yes.

Q. Where do you live now?

A. I am residing at Union, Oregon, at the present time.

Q. Prior to that where did you live?

A. Sandpoint.

Q. What is your occupation?

A. Woodsman.

Q. Have you ever been engaged in wood-work at Caribou? A. Yes.

Q. When did you first start there?

A. July, '35.

Q. At what time? [550] A. July, '35.

Q. And what work did you do there?

A. At the start we surveyed right of way.

Q. Who is "we"?

A. Mr. Breen and myself.

Q. What did you do in that process?

A. Mr. Breen ran the transit and I held the rod and assisted him.

Q. In addition to Mr. Breen, did anyone else assist you two on the surveying job?

A. Yes.

(Testimony of Arthur Burford.)

Q. Who?

A. Herbert Hunt and James Brown, Jr.

Q. What did you survey the road for?

A. For the Long Lake Lumber Company.

Q. In addition to surveying the road for the Long Lake Lumber Company did you do any other work on the right of way? A. Yes.

Q. What? A. I acted as powder man.

Q. Did you know George Moore?

A. Yes.

Q. Who did you see about getting on that road job? A. Mr. Breen.

Q. Is he the one who hired you? [551]

A. Yes.

Q. Who fixed your rate of pay?

A. Mr. Breen.

Q. From whom did you draw your checks when on that road job? A. Mr. Robinson. [552]

Q. What men did you have working with you down at Caribou?

A. Down at Caribou? Jack Whitney and Henry Courser and Henry Samuel.

Q. How long did Mr. Brown, Jr. continue in his duties at the Caribou operation after this time when he came up to take over the timekeeping job?

A. He was there practically all summer; I don't know what his duties were on that same job.

Q. At any time while you were at Samuels did you see Mr. Brown, Jr.?

A. I saw him while he was there at Samuels.

Q. Did anything occur at that time?

(Testimony of Arthur Burford.)

A. Yes.

Q. What was it?

A. Mr. Brown, Jr. fired Mr. Jack Whitney.

Q. After that did Mr. Whitney work on that job any more? A. No. [560]

Q. Did you stay and clean out that section?

A. No.

Q. Do you remember the day upon which the camp closed in June, '39? A. Yes, sir.

Q. Do you remember the incident of the Union holding a meeting? A. Yes, sir.

Q. And did you work on the day on which the Union meeting was held? A. Yes, sir.

Q. Did you work the next day? A. No.

Q. What happened that day?

A. Mr. Robinson told me to go out and bring my rigging in and turn in my blankets.

Q. Did you get the rigging in? A. Yes.

Q. When you brought it into the camp, what did you do? A. I took it in.

Q. What did you do then?

A. Turned in my blankets.

Q. Then what?

A. I went to the office and got my check. [566]

Cross Examination [570]

Q. Did you say, or were you present at the time you say that James Brown, Jr. fired a man by the name of Whitney? A. Yes, I was present.

Q. Where was Mr. Whitney working?

A. At the landing at Samuels.

(Testimony of Arthur Burford.)

Q. At the landing at Samuels, on the landings loading the logs on cars at the siding?

A. No, at the skidways, the unloading skidways.

Q. The unloading skidways. A. Yes, sir.

Q. In connection with the unloading of trucks that hauled the logs? A. Yes, sir.

Q. And then being loaded subsequently on the railroad cars? A. Yes, sir.

Q. That is what was done at Samuels?

A. Yes, sir.

Q. Were you working there at the time at Samuels? A. Yes, sir.

Q. What doing?

A. Helping to construct the skidways.

Q. You were constructing them? [584]

A. Yes.

Q. That was what the man Whitney was doing?

A. Yes.

Q. Was he working under you? A. Yes.

Q. Who had directed you to go to Samuels to construct the skidways? A. Mr. Robinson.

Q. Was that in the spring or summer of 1936?

A. Yes.

Q. Was Mr. Whitney working at that time this incident occurred? A. Yes.

Q. Were the men working there? A. Yes.

Q. Several or not? A. Oh, not several.

Q. Was Mr. Robinson there at the time?

A. No.

Q. I forgot whether I asked you this: Were you in charge of the crew? A. Yes. [585]

Q. (Mr. Potts) I will ask, did you know whether

(Testimony of Arthur Burford.)

Mr. Robinson had sent James Brown, Jr. down there to give this man his time, did you know or not? A. I didn't know.

Q. Why did you let him go; you let him go, didn't you?

A. After Jimmie told me he was fired we had a little argument and he would not stay.

Q. You were in charge of the crew?

A. Yes.

Q. You had refused shortly before that to recognize James Brown's authority to discharge two other men, hadn't you? [586] A. Yes.

Q. Why did you recognize his authority on this occasion? A. I did not.

Q. Then you didn't let the man go?

A. I said he did not need to go if he didn't want to until after I had seen Mr. Robinson.

Q. And he didn't want to stay there?

A. He didn't want to stay after the words with Mr. Brown.

Q. (Mr. Potts) The man did quit then and left the job? A. Yes. [587]

Redirect Examination [591]

Q. (Mr. Walker) Had anything been said to Mr. Whitney prior to the time that he left the job?

A. Had anything been said to him?

Q. Yes. A. No.

Q. Had anything been said—anything said to Mr. Whitney prior to the time he said he was leaving the job?

A. Mr. Brown, Jr. told him he was fired. [592]

FRANK MURPHY, [593]

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker) What is your name?

A. Frank Murphy.

Q. You live in Sandpoint? A. Yes, sir.

Q. What is your occupation?

A. The woods—a woodsman.

Q. How long have you done woodwork?

A. Since I was 14 years old.

Q. What kind of work have you done in the woods?

A. Sawed and swamped and driven teams and worked.

Q. Did you ever work at Caribou? A. Yes.

Q. When did you first start in there?

A. 1938.

Q. In 1938 what kind of work did you do at Caribou? A. I saw sawing. [594]

Q. At any time after June 7, 1939, did you work again at Caribou? A. During '39?

Q. During 1939.

A. We went back to work on the 24th of July.

Q. You have been saying "we". Whom do you mean by "we"?

A. My brother and I, who was my partner.

Q. He was your partner all through the '39 season? A. Yes.

Q. (Trial Examiner Hektoen) Is that Earl?

A. Earl.

(Testimony of Frank Murphy.)

Q. (Mr. Walker) When you went up to camp upon the resumption of work did you see anyone?

A. Yes.

Q. Who told you where to go to work?

A. Mr. Davis.

Q. And where did you go?

A. He told us to go to Smalling's.

Q. Did you go up to Smalling's?

A. Yes, we did.

Q. Did you go to work? A. Yes. [598]

Q. On what section had you been working prior to June 7, 1939?

A. I could not say anything about the section because I do not know where they lay up there.

Q. What type of material were you working in?

A. Working on white pine before June the 7th.

Q. When you got back up to Smalling's camp upon the resumption of work, where were you put to work?

A. We were put to work out where they had pine cut over—spruce.

Q. Who sent you up there?

A. Mr. Smalling.

Q. How long did you work on the spruce job?

A. We were up there three hours or three and a half hours.

Q. Then what happened?

A. Then we came down to town.

Q. That was the end of the day? A. Yes.

Q. Did you work the next day?

(Testimony of Frank Murphy.)

A. We went down to the main camp the next day.

Q. How did you happen to go there?

A. We got into camp just before supper and Mr. Robinson said he wanted us at the main camp.

Q. Did you go down?

A. Yes, the next morning. [599]

Q. Did you see anyone in the main camp?

A. Yes, sir.

Q. Who? A. Frank Robinson.

Q. What did he say?

A. He said to come down and see Mr. Chaney and saw for him.

Q. Did you go down? A. Yes.

Q. Who put you on that strip?

A. Mr. Chaney; Fred Chaney.

Q. Did you see Mr. Robinson any time after you saw him at the camp that day?

A. At the camp he told us to go down to Fred Chaney's and I didn't know where to start in and he said there is a jammer pole stuck in the road and wait for me there, and we just got down there and we met Fred Chaney.

Q. Where was it at, the jammer pole?

A. The jammer pole?

Q. Yes.

A. And he told us to go down below and it was just up the hill and we sawed up one tree and he had gone to the hospital and Mr. Robinson said he would come and show us and we waited at the

(Testimony of Frank Murphy.)

Chaney's trailer house and he was to come and get us there.

Q. You were waiting at Chaney's trailer house to go to the [600] hospital?

A. No, to meet Mr. Robinson.

Q. Did Mr. Robinson come along?

A. Yes.

Q. Did you have a talk with him?

A. Yes. He started to drive by and I halloed and he stopped with the pickup. I said Mr. Chaney showed us the strip and he said, "Well, I see you are wearing your button." I said, "Yes." And he said, "You and your Union button won't be here very long," and picked up and left.

Q. What were you wearing?

A. A Union button, C.I.O.

Q. (Trial Examiner Heckton) Who said this, Mr. Chaney?

A. Mr. Robinson.

Q. That would be on the 26th?

A. Yes, that would be on the 26th. [601]

EARL MURPHY,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker) What is your name?

A. Earl Murphy.

(Testimony of Earl Murphy.)

Q. Are you a brother of the gentleman we have been talking about? A. Yes, sir.

Q. Do you live at Sandpoint? A. Yes.

Q. What is your occupation?

A. Wood work.

Q. How long have you been engaged in wood work?

A. I have worked in the woods off and on ever since 1924.

Q. What type of work did you do?

A. I skidded, sawed and swamped and helped hook on the jammer.

Q. Have you ever worked at Caribou?

A. Yes.

Q. When did you first work there?

A. The first time was in 1938. [620]

Q. When you resumed working after the camp reopened where did you go to work?

A. I went back to Smalling's.

Q. What kind of material did you work on at Smalling's when you went back?

A. They put us on the spruce.

Q. Then from the spruce job where did you go?

A. We went down to Chaney's. [624]

Q. How did you happen to go to Chaney's?

A. Well, we came in that night for supper and Mr. Smalling came up into the bunkhouse; we were sitting there; and said, "Frank don't want no more spruce cut." I said, "What about the white pine, aren't you cutting more white pine?" He said, "I don't know, Frank gave me orders for you to go

(Testimony of Earl Murphy.)

to the main camp and cut down there." I said, "It is funny that they are not going to cut any more white pine."

Q. Who told you to go on the Chaney strip?

A. I believe Arden Davis did.

Q. Did you go over there?

A. Yes. Frank said he would be there in a few minutes and show us the strip.

Q. Did you go down to the strip?

A. Yes; Frank said he would be there in a few minutes and show us the strip.

Q. You went down to the strip.

A. Yes; me and my brother walked down there to the strip with our tools and we met Mr. Chaney and asked him where our strip was; and he showed us and we waited there and after we felled a tree we cut the tree up into logs, and then we went back to Chaney's trailer house and waited there for pretty nearly an hour.

Q. Then what happened?

A. Before Mr. Robinson came along. [625]

Q. Did you see him?

A. He drove up in the pickup.

Q. Did you talk to him?

A. He got out of the truck and my brother hailed him down; he got out of the truck and said, "Did you fellows get your strip?" My brother said, "Yes." He said, "Oh, you are still wearing the button; I see you are wearing the button." My brother said, "Sure." And he said, "You and your Union button won't be around here long." He got into the truck and drove off. [626]

ARDEN DAVIS,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. What is your name? A. Arden Davis.

Q. You reside in Sandpoint? A. Yes.

Q. You are the accountant, the bookkeeper or whatever the case may be? A. Yes.

Q. Now, how long have you held that position, Mr. Davis? A. Since February 22, 1934.

Q. And during all that time have you had charge of the books and records? A. Yes.

Q. Of the books and records and the accounting of the scale, for instance?

A. I have taken care of Mr. Robinson's books on the job.

Q. Does it constitute keeping a record of the scale of all logs made? A. Yes. [651]

Q. And does it also include keeping a record of the time of the men? A. Yes.

Q. When they start to work and of when an individual leaves that employment? A. Yes.

Q. What method of payment is usually applied? All disbursements are made by check?

A. Yes.

Q. Except the matter of the disbursing of funds for the payment of wages, are all disbursements made in pursuance of statements rendered; is that the usual procedure, you require the rendering of a statement before the disbursement is made?

(Testimony of Arden Davis.)

A. You asked for three copies.

Q. Yes.

A. You want it to go in as three copies?

(Discussion off the record.)

MR. WALKER: This will be marked Board's Exhibit No. 6 for identification. [654]

(Thereupon the document hereinabove referred to was marked Board's Exhibit No. 6 for identification.)

Q. (Mr. Walker) Mr. Davis, I hand you what has been marked Board's Exhibit No. 6 for identification and I will ask you what that is.

A. That list is of the employees that were on the payroll as of June 5, and I might say——

Q. 1939? A. Yes.

Q. And some of those employees were not working on June the 5th; however, they were paid off; with the date on which they were first hired in 1939.

Q. That appears under the heading entitled "June"?

A. Yes. The employees that were on the payroll during the month of July, or the date they were hired after June the 5th, or some of them. We started through from the time they were first hired in 1939; also the employees during the month of August with the date they were hired after June 5, 1939.

TRIAL EXAMINER HEKTOEN: Does that date appear under the heading "August"?

The Witness: That date appears under the heading "August".

(Testimony of Arden Davis.)

Q. (Mr. Walker) Mr. Davis, in the instance some of the employees who have the same date under the heading July and again under the heading August, it simply indicates the individual had remained in the employment during August, although [655] his first date of resumption was in July; is that correct? A. Yes.

Q. Was Board's Exhibit No. 6 for identification prepared by yourself? A. Yes, sir.

Q. And it was prepared from the original payroll record, was it? A. Yes, sir.

Q. Mr. Davis, what was the practice followed in ordering supplies for the camp at Caribou during the 1939 season?

A. Why, we ordered by requisition, once in a while I would get something without a requisition; but as a rule, I did all the ordering by requisition.

Q. Take the case of the cookhouse. Will you explain how the cook, for instance, goes about obtaining the supplies necessary for the cookhouse?

A. Yes; they make a list and we have this wholesale man from Spokane for the bulk of the cookhouse supplies; it comes out every month and it goes to the cookhouse and I get it and give it to the wholesale man on his order form.

Q. Will you explain what system is followed in the matter of procuring supplies for the horses, for instance?

A. Well, we, as a rule, with people who have hay to sell come to camp and sell it and sometimes our employees have hay on some ranch and they will ask us to make a deal for it. [656]

(Testimony of Arden Davis.)

Q. Are you the person to whom the order for hay is delivered? A. Not always.

Q. Whose duty is or was it in 1939 to observe that sufficient feed for the horses is maintained at the barn?

A. I generally watch it and see that we do not get low on anything, and then order it.

Q. That is true on both hay and oats, is it?

A. Yes, sir.

Q. Prior to June 7, 1939, do you recall whether or not you had ordered a load of hay?

A. The only hay we ordered before that, we bought twelve ton, I think it was, from Mr. Pearson, who had it stored here in town.

Q. When was that delivered, with respect to June 7, 1939?

A. I think just before, a few days before. We hauled a part of it, hauled some in; we had it in the warehouse and we hauled it as we needed it. If we didn't have too much on our supply truck we would load it and bring it in. I don't know. We would get it in.

Q. Had you ordered a load of oats during any time prior to June 7, 1939?

A. I don't remember.

Q. Do you remember a man from Bonners Ferry selling a load of oats which was delivered about two or three days before June 7th? [657]

A. We got oats from Boyd Connelly at Bonners Ferry, but I cannot tell you the date. I imagine it was—we usually get them in five-ton lots, and I

(Testimony of Arden Davis.)

think we got it when we first took the horses in in May; we may have had it from the year before; but we got oats in that time sometime.

Q. Do you recall subsequently of an order of oats from Boyd Connelly at Bonners Ferry just shortly prior to June 7, 1939?

A. I cannot recall it now, how soon it was.

Q. Had you placed an order with Connelly at Bonners Ferry since the camp opened along in May, 1939?

A. Yes, I think I had.

Q. On June 5, 1939, do you recall who was the cook in charge at that time?

A. We quit that day. We had two cooks, Harry Garvin in the morning and C. C. Sperber in the evening.

Q. Was an order for supplies at the cookhouse placed with you on that Monday, do you recall?

A. No, there was not.

Q. You mean there was not or that you do not recall?

A. No, there was not; there was not.

Q. You mean you did not place a call with the wholesale man or that the order was not placed with you by either Garvin or Sperber?

A. No. [658]

Q. Which—no—which?

A. I can explain it. The week before I knew Garvin was leaving, he wanted to leave, and I told him he better get an order to carry the next cook over for two weeks because I said, if we change on Monday, one person won't know what the other one

(Testimony of Arden Davis.)

wants, so I got enough in there to run us over this particular week.

Q. I see; that order was delivered at camp the succeeding Wednesday?

A. As far as that is concerned I don't remember, but it came in.

Q. Mr. Davis, were you in the office at Caribou on the evening of June 6th? A. Yes.

Q. Yes. And in fact, you were in camp all that day, weren't you? A. No, I was not.

Q. I don't mean every hour of the day, but you did work that day? A. Yes.

Q. Do you remember when Mr. Brown, Jr., came to the camp that evening?

A. I was downtown that afternoon and Mr. Brown, Jr., was in camp when I came into the camp again.

Q. About what time did you get back to camp that evening? [659]

A. I was away late for supper; I don't remember the hour.

Q. And the supper is usually served about——

A. (Interrupting) Five o'clock.

Q. Were you in camp by seven o'clock that evening? A. Yes, I think so.

Q. Did you receive or expect a telephone call that evening? A. Not that I remember.

Q. A call about seven o'clock that evening?

A. I don't remember about expecting any call that evening; I don't remember anything.

Q. Whether you expected one call or two calls that evening, or more? A. No.

(Testimony of Arden Davis.)

Q. You don't remember the fact. Where is the telephone situated at the camp?

A. In the office.

Q. In the office? A. Yes.

Q. Do you recall whether or not a telephone call had come to the camp that evening? A. No.

Q. I have two or three questions more which I don't know whether I have asked before or not.

Mr. Hunt: Go ahead.

Q. Mr. Davis, do you know of a chattel mortgage having been [660] executed by Mr. Robinson and the Bonner County National Bank?

A. Yes.

Q. Can you state about the date on which that was executed.

A. I believe it was sometime in March.

Q. 1939? A. Yes.

Q. And what was the due date of this mortgage, if you recall?

A. I think it was running annually.

Trial Examiner Hektoen: I didn't get that.

The Witness: I think it was annually.

Q. (Mr. Walker) Would it be correct to say that that mortgage was for the duration of the six months' period?

A. Possibly, yes; I know now, I paid the interest every six months.

Q. Has it been discharged yet?

A. No, it has not.

Q. What is the principal sum of the mortgage?

A. \$10,000.

(Testimony of Arden Davis.)

Q. At the beginning of the 1939 season, was Mr. Robinson indebted to the Long Lake Lumber Company? A. Yes.

Q. Do you recall approximately how much that was? A. \$24,000 or approximately that.

Q. Can you give me the figure approximately of how much the [661] two double-drum skidding tractors cost?

A. The first one and the second one—I think it was \$3900 approximately for the first, a second-hand one; and the second one, a new one, was about five thousand—\$4900.

Q. And those two machines were acquired subsequent to the beginning of the 1939 season?

A. Yes.

Mr. Walker: I offer in evidence this document which was marked Board's Exhibit No. 2 for identification and Board's Exhibit No. 6 for identification.

Trial Examiner Hektoen: Is there any objection?

Mr. Hunt: No.

Trial Examiner Hektoen: They will be admitted without objection.

Mr. Potts: How many sheets are contained in Board's Exhibit No. 6; how many sheets?

Mr. Walker: Nine.

Trial Examiner Hektoen: Nine sheets. They will be received.

(Whereupon the document heretofore marked Board's Exhibit 2 for identification was received in evidence.)

(Testimony of Arden Davis.)

BOARD'S EXHIBIT No. 2

LOGS OUT OF CARIBOU—1939

	1938	1939
January		
February		
March		
April		
May		
June	2,199,850	181,360
July	2,407,440	1,004,840
August	2,622,980	2,870,390
September	2,892,470	1,593,240
October	1,647,030	1,259,110
November	52,060	1,043,930
December		
	<hr/>	<hr/>
	11,821,830	7,952,870

(Whereupon the document heretofore marked Board's Exhibit 6 for identification was received in evidence.)

BOARD'S EXHIBIT No. 6

F. D. ROBINSON CARIBOU BASIN PAYROLL
EMPLOYEES ON PAYROLL JUNE 5th, 1939

	NAME	JUNE	JULY	AUGUST
1	Bews, James	5-2		
2	Bews, John	5-2		
3	Brookshire, William	5-9		
4	Buhr, Henry	5-19	7-20	7-20
5	Burford, A. J. ✓	5-28	7-20	7-20
✓ 6	Brodine, Chas. ✓	5-23	7-22	7-22
✓ 7	Barwise, Robert ✓	6-1		
✓	Bopp, Jack asst in office	6-1	6-1	6-1
8	Berry, Charles ✓	6-5	7-17	7-17
✓ 9	Berger, Ernest ✓	6-5		
10	Crocker, Max	5-2		8-1

(Testimony of Arden Davis.)

F. D. Robinson Caribou Basin Payroll—(Continued)

	NAME	JUNE	JULY	AUGUST
11	Critchell, Kenneth	1-2	1-2	1-2
12	Critchell, George	5-18	7-15	7-15
13	Cox, C. C.	6-1	7-20	7-20
14	Cox, L. E.	6-1		
✓15	Chaney, Arlie✓	6-1	7-5	7-5
✓16	Chaney, Cecil	6-1	7-5	7-5
17	Casa, Zin	6-1	7-25	7-25
✓18	Chaney, Fred	6-2	7-21	
19	Campbell, Walter	6-5	7-20	7-20
✓20	Dingley, Charles✓	4-7		
✓	Davis, Arden office mgr	1-1	1-1	1-1
✓21	Dobravee, Joe✓	6-2	7-15	
22	Bernard Durriek✓	6-2		
✓23	Earley, Ted✓	4-27	7-19	7-19
✓24	Evans, A. W.✓	5-23		
✓ 5	Feeco, Art✓	5-15		
✓ 6	Feeco, Ralph✓	5-15		
✓ 7	Faurot, Albert✓	5-25		
✓ 8	Finley, J. L.✓	6-5	7-19	7-19
✓ 9	Greer, Dale✓	5-15		
✓30	Garvin, Harry✓	1-1		
✓ 1	Gunsalus, Harry	6-2	7-5	7-5
2	Gooby, C. J.	1-1	7-20	7-20
3	Gooby, Basil	4-1		
✓ 4	Henry, William✓	4-6	7-10	7-10
✓ 5	Harder, Stanley	4-5	7-26	7-26
✓ 6	Hendrickson, Albin✓	1-1	1-1	1-1
✓ 7	Haney, Orlando	5-3	7-20	7-20
✓ 8	Hansen, Martin✓	5-15		
9	Hulbert, Bernerd	5-16	7-14	7-14
✓40	Hunt, Emery✓	6-5	7-24	7-24
✓ 1	Joseph, Clifford✓	4-10	7-24	7-24
✓ 2	Jenkins, Robert	6-1	7-19	7-19
✓ 3	Joseph, Joel	6-1	7-24	
✓ 4	Kirtley, Ura✓	4-6		
5	Klingman, William	1-1	7-20	7-20
✓ 6	Kurwitz, Elmer	6-1		
✓ 7	Lang, Bud✓	4-10	7-22	7-22

(Testimony of Arden Davis.)

F. D. Robinson Caribou Basin Payroll—(Continued)

	NAME	JUNE	JULY	AUGUST
✓ 8	Lisles, Charlie✓	5-18		
✓ 9	McCarr, Jack✓	5-12	7-24	7-24
50	McHenry, Roy	5-15		
1	Moody, Clarence	5-2	5-2	5-2
✓ 1	Moore, Gregory✓	4-6	7-19	7-19
✓ 3	Miller, Dwight	4-6	7-14	7-14
✓ 4	Monett, Robert✓	4-27		
5	Millsaps, Earl M.	5-9		
6	Morrow, Jim	6-1	7-14	7-14
✓ 7	Mor, Frank✓	5-18	7-25	7-25
8	Millsaps, A. J.	5-23		
9	Moody, Sidney✓	6-1	7-16	
✓ 60	Murphy, Frank	6-1	7-24	
✓ 1	Murphy, Earl	6-1	7-24	
2	Morrow, Harry	6-2	7-14	7-14
✓ 3	Mardis, Neil✓	6-5	7-24	7-24
✓ 4	Olson, Hjalmar✓	5-1	7-25	7-25
5	Olson, Vernoy	5-8		
✓ 6	Peterson, Curtis✓	5-1	7-22	7-22
✓ 7	Peterson, Ralph✓	4-11	7-10	7-10
✓ 8	Porter, Cecil	6-5	7-19	7-19
✓ 9	Robinson, Granville✓	5-2		
✓ 70	Robinson, Grant	5-11		
1	Rateliff, Everett	5-16	7-14	7-14
2	Ritchie, Herbert	6-1	7-19	7-19
3	Rogers, L. A.	6-5	7-1	
✓ 4	Runyan, Cecil	6-3	7-5	7-5
5	Robinson, Tom	5-2	7-13	7-13
✓ 6	Stevens, Boyd✓	4-4		
7	Sage, Bert	5-8	7-20	7-20
✓ 8	Swenson, Andrew✓	5-15	7-15	7-15
✓ 9	Smith, Clyde✓	5-16		
80	Smalling, Len	6-1	7-19	7-19
✓ 1	Stevenson, Charles✓	4-21	7-24	
2	Stevens, Ray✓	6-1		
✓ 3	Sperber, Herbert✓	6-5		
✓ 4	Sperber, C. C.	6-5	7-10	7-10
✓ 5	Sperber, Marie✓	6-5	7-10	7-10
✓ 6	Twist, C. E.✓	6-1	7-21	7-21

(Testimony of Arden Davis.)

F. D. Robinson Caribou Basin Payroll—(Continued)

	NAME	JUNE	JULY	AUGUST
7	Vest, Stanley	6-5		
✓ 8	Williams, Fred✓	5-2		8-1
✓ 9	Waffle, Jack✓	5-3	7-20	7-20
✓ 90	Way, Nathan✓	5-6	7-17	7-17
✓ 1	Wise, L. M.✓	6-1		
2	Wilke, Tom	6-1	7-19	7-19
✓ 3	Yeazel, Robert✓	5-18	7-27	7-27
JULY NEW MEN		JUNE	JULY	AUGUST
	Altig, Clarence		7-18	
	Ackalov, Andrew		7-24	7-24
	Boothe, Swin		7-14	7-14
	Boling, William		7-15	7-15
	Bowlby, John		7-20	7-20
	Boling, Alfred		7-24	7-24
	Busha, George		7-29	7-29
	Blume, Claude		7-26	
	Carter, Lewis		7-14	
	Carter, George		7-14	
	Cyre, R. M.		7-19	7-19
	Campbell, C. A.		7-17	7-17
	Chaney, Roland		7-14	7-14
	Critchell, Addison		7-27	7-27
	Crotteau, C. W.		7-31	7-31
	Decker, Lealand		7-31	7-31
	Davis, Earl		7-17	7-17
	Dodge, William		7-17	7-17
	DeBacker, Joe		7-26	7-26
	DeBacker, Bill		7-26	7-26
	DeBacker, Chas.		7-26	7-26
	Falk, William		7-18	7-18
	Foss, Clarke		7-31	7-31
	Gower, Robert		7-17	7-17
	Gumaer, Mart		7-20	7-20
	Hilsen, Arthur		7-14	7-14
	Harris, J. E.		7-14	7-14
	Harris, Byron		7-14	7-14
	Hesselgesser, Paul		7-20	

(Testimony of Arden Davis.)

F. D. Robinson Caribou Basin Payroll—(Continued)

NAME	JUNE	JULY	AUGUST
Hanaway, T. W.		7-20	7-20
Hensley, Lonnia		7-17	7-17
Helander, Herman		7-25	7-25
Hudon, Pearl		7-25	7-25
Iverson, Richard		7-28	7-28
Johnson, C. A.		7-17	7-17
Janson, Carl		7-24	7-24
Kutulas, Gust		7-14	7-14
Kannady, William		7-26	7-26
Kirkpatrick, Joe		7-29	7-29
Lekoff, Alex		7-24	7-24
LaRose, Edward		7-24	7-24
Lutes, Burton		7-27	7-27
Millard, Leon		7-14	
Manning, Clarence		7-17	
Montague, Reuben		7-22	7-22
Miller, William		7-27	7-27
Miller, K. J.		7-31	7-31
Moody, Mrs. Sidney		7-30	7-30
Norman, Victor	6-6	7-3	7-3
Nichols, Jesse		7-27	7-27
Norstadt, James		7-31	7-31
Putnam, Gene		7-17	7-17
Peterson, Carl		7-25	7-25
Rosemyer, H. F.		7-26	7-26
Robinson, Lloyd		7-28	7-28
Robinson, Ward		7-28	7-28
Rogers, Eleanore		7-28	7-28
Sperber, Jim		7-14	7-14
Simpson, James		7-14	
Swanson, Robert		7-17	7-17
Swanson, George		7-17	7-17
Schull, Howard		7-17	7-17
Sharp, Roy		7-17	
Sciaccotti, Frank		7-19	
Stockman, Alex		7-20	7-20
Sperber, Mrs. J. F.		7-16	
Schovaers, Charles		7-26	7-26
Stradley, Hanley		7-26	7-26

(Testimony of Arden Davis.)

F. D. Robinson Caribou Basin Payroll—(Continued)

NAME	JUNE	JULY	AUGUST
Tillman, Jack	5-1	7-1	7-1
Tarr, LeRoy		7-26	7-26
Tidd, Joe		7-31	7-31
Villiard, Louie		7-20	7-20
Winslow, Forrest		7-20	7-20
Wattman, Harold		7-26	7-26
Waterman, Leo		7-31	7-31
Aldrich, Frank			8-22
Bowers, Ed.			8-5
Bonny, Vernon			8-9
Boyland, Clarence			8-4
Brynteson, H. F.			8-14
Chandler, William			8-1
Carnegie, Andrew			8-1
Chance, Virgil			8-5
Coleman, Robert			8-8
Carr, Jim			8-14
Ellertsen, Stanley			8-7
Evanuk, Tony			8-9
Forgey, Robert			8-4
Forgey, Carl			8-12
Graw, Gilbert			8-8
Gustafson, Axel			8-21
Geer, Llewellynn			8-30
Holton, Roy			8-1
Hesner, Cecil			8-2
Hale, Roy			8-9
Hollender, Chas.			8-4
Hansen, Paul			8-23
Hughes, Harry			8-22
Inghram, Howard			8-14
Kosoff, Alex			8-3
Kenny, Patrick			8-3
Kenny, Harry			8-3
Kinny, Walter			8-11
Kosoff, Pete			8-12
Logan, Roy			8-5
Loding, P. O.			8-21
McKinley, Raymond			8-1

(Testimony of Arden Davis.)

F. D. Robinson Caribou Basin Payroll—(Continued)

NAME	JUNE	JULY	AUGUST
McMurray, E. A.			8-8
Mathews, E. M.			8-3
Nash, Gerald			8-14
Osborne, William			8-16
Powell, Danvy			8-1
Pearce, W. J.			8-3
Peterson, Archie			8-7
Powell, C. J.			8-7
Perry, Henry			8-4
Rambo, Ralph			8-3
Ruther, Tom			8-21
Rockwell, Wendell			8-17
Reynolds, Clifford			8-29
Savage, James			8-28
Shannon, Lucian			8-3
Stevens, Edward			8-4
Snead, B. F.			8-5
Stonebraker, Clyde			8-7
Staley, Jesse			8-12
Scott, Frank			8-16
Stevens, W. C.			8-21
Treat, Art			8-23
Witherall, Ira			8-25
Wallson, Lawrence			8-4
Williams, R. E.			8-7
Wallson, Chester			8-28
Jones, Bill			8-24
Yanders, Clarence			8-2

Q. (Trial Examiner Hektoen) Tell me again about the second column which is headed "July". (Referring to exhibit.) [662]

A. Those are the men who were in our employ during the month of July and the date that they were hired.

(Testimony of Arden Davis.)

Q. During that month?

A. No; after June 5th.

Q. Take Critchell; he began work in May?

A. He began work May 18th and was on the payroll June 5th.

Q. And then he came back in July?

A. Yes.

Q. He was still there on August 15th?

A. He was still there during the month of August and was hired.

Q. I see.

A. He went straight through.

Q. Very good.

Q. (Mr. Walker): Referring to what is marked as Board's Exhibit 6 I call attention to the individual whose last name is Stradley.

Mr. Hunt: What date is this?

Mr. Walker: This is on Exhibit 6.

A. The first name is Harrley.

Q. That is the correct spelling of the first name rather than the manner in which it is spelled on Board's Exhibit 6 in type? A. Yes.

(Thereupon at this time a short recess was taken, after [663] which proceedings were resumed as follows:)

C. C. SPERBER,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker): What is your name?

A. C. C. Sperber.

Q. You reside at Plummer, Idaho, do you?

A. Yes.

Q. What is your occupation?

A. I have several businesses. This last couple of years I have been cooking.

Q. What type of cooking?

A. In logging camps.

Q. During 1939 did you do any cooking at Caribou? A. Yes.

Q. Do you recall when you first started in there?

A. I think it was the 5th of May—of June.

Q. Did you work that day? A. Yes.

Q. During any time of that day upon which the Union meeting was held did you see Mr. Robinson?

A. Not until that evening. He may have been in in the morning but I would not have noticed.

Q. Did you serve the evening meal on that day?
[664]

A. Yes.

Q. With respect to the time when the evening meal was served, when did you first see Mr. Robinson?

A. I would not say positively but I think it was after the meal was served.

(Testimony of C. C. Sperber.)

Q. Where did you see him?

A. In the quarters in the cookhouse.

Q. Did you have a talk with him at that time?

A. Very few words.

Q. What was said?

A. I think the first that was said, I think Mr. Robinson said, "We might be going to have some excitement in the camp as there is going to be a Union meeting for organization."

Q. Did you say anything about that?

A. I suppose I made some answer. It was the first I had heard of it and I would not remember.

Q. Was there anything more said by Mr. Robinson at that time?

A. He came in shortly later again and spoke to me—shall I go ahead?

Q. Was this the same evening?

A. This was the same evening.

Q. And about how much time had gone by between when he first came in and when he came back the second time?

A. It might have been thirty or twenty minutes; it might have been a little longer. [665]

Q. What was said the second time?

A. Mr. Robinson wanted to know if my wife and I belonged to the Union. Our boys were working there. I told him no. He said if it was turned into a Union camp we would probably have to belong to the Union.

Q. Did you say anything to that?

A. I asked him what Union and he said, "Under

(Testimony of C. C. Sperber.)

the circumstances it might be a good thing.” And I said, I had never belonged to a Union and didn’t know anything about it and he said, “It might be all right under the circumstances.”

Q. Have you related everything which you recall which was said during this second conversation?

A. As near as I can remember.

Q. After this second time did you ever see Mr. Robinson again that day?

A. Yes, sir; he was in quite a bit later that evening.

Q. Was anyone with him?

A. Yes.

Q. Who?

A. Mr. Critchell and Mr. Jimmie Brown; there may have been others but I remember those definitely.

Q. Did you have a talk with any of them at that time?

A. No, I don’t think so, only Mr. Brown, I think it was Mr. Brown, asked me if I was a Union man now and I told him I was. [666]

Q. What had occurred in the meantime?

A. The organizer, Mr. Johnson, came in and asked us to sign up and we had signed up.

Q. Did anything take place between the time of the second conversation and the time of the third conversation that you learned of?

A. I learned that they had had a meeting.

Q. Who had had a meeting?

A. The Union and Mr. Robinson; it was hearsay with me; it was nothing that I participated in.

(Testimony of C. C. Sperber.)

Q. Was there anything said by Mr. Robinson to you with respect to the meeting which had been held between Mr. Robinson and the Union?

A. There was something said but as to the exact time it was said that evening or whether the next morning, I am not positive.

Q. During the conversation with Mr. Robinson, did he make any reference to having had a meeting with the Union?

A. He did at one time but as I said I don't remember whether it was that evening he told me that or next morning.

Q. The next morning did you see Mr. Robinson? A. Yes.

Q. Do you remember the incident of the camp closing down? A. Yes.

Q. About what time did you see Mr. Robinson the next morning? [667]

A. Well, I think it was after breakfast had been served.

Q. Did you have a conversation with him at that time?

A. A few words; he came in and told me that everything had been settled and they were all going to work.

Q. Did the men go to work that morning, do you know?

A. As far as I know they came in and ate breakfast and put up their lunches and all went out.

Q. After this time did you see Mr. Robinson again that day?

(Testimony of C. C. Sperber.)

A. Not until, I think it was shortly before dinner when he came in again.

Q. Did you have a talk with him at that time?

A. He said the stuff was off, that he guessed the camp was going to close.

Q. (Trial Examiner Hektoen): That was before dinner? A. Yes.

Q. (Mr. Walker): During this last conversation did Mr. Robinson make any reference to having had a meeting with the Union?

A. Yes, he said they had come up to see him at the office again.

Q. Did he say anything further?

A. He said they were making demands which at present looked like it was impossible for him to meet.

Mr. Walker: That is all.

Cross Examination [668]

Q. (Mr. Hunt): You mentioned Jimmie Brown, you mean James M. Brown, Sr. or Junior?

A. Junior.

(Witness excused)

ADAM L. PIERSON,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker): What is your name?

(Testimony of Adam L. Pierson.)

A. Adam L. Pierson.

Q. Where do you reside?

A. Coeur d'Alene.

Q. What is your occupation?

A. Millworker.

Q. Are you a member of any labor organization?

A. Yes, I am president of the I.W.A., Local 119.

Q. When did Local 119 of the I.W.A. come into existence?

A. September 15, 1937, the charter was installed.

Q. What is the organization issued the charter to the Local No. 119?

A. The International Woodworkers of America.

Q. Is that organization affiliated with any other?

A. It is affiliated with the C.I.O.—the Congress of Industrial Organization.

Q. When did you assume the position of president? [669]

A. I served two terms in the office, the first one in 1937 and the last from 1938 to the present time.

Q. Do you hold any other offices with the organization other than as stated?

A. I am president of the Inland Empire District Council of the International Woodworkers of America.

Q. What geographic territory is covered by Local 119?

A. The northern part of Washington and all of the State of Idaho at the present time,—Local 119?

(Testimony of Adam L. Pierson.)

Q. Yes.

A. I thought you referred to the Provisional Committee. I would like to make a correction. Couer d'Alene and Sandpoint.

Q. Has Local 119 any individual in its membership who at any time has been employed at Caribou operations?

A. Yes.

Q. When did organizational work begin in the Sandpoint area, do you recall?

A. No, in the middle of May, I believe; it was in 1939.

Q. How was the organizational campaign conducted at Sandpoint?

A. We sent a business agent out here through the request of the Sandpoint loggers for organization.

Q. When you say "we", who do you mean by "we"?

A. Local 119.

Q. Under the rules and the regulations of Local 119, will you state who, or what type of individuals are eligible for [670] membership?

A. Any employee of the lumber industry that takes any part in the making or processing of lumber from the stump and the finished product including all classes such as loggers, special woodworkers, millworkers, box shook makers, planers, and sawmill men, loaders, truckdrivers, I mean truckdrivers in the process of hauling logs from the woods to the landing and so forth.

Q. With respect to this operation will you state

(Testimony of Adam L. Pierson.)

what classification of workers are eligible to membership?

A. The only class who are exempt from membership in the logging operations are those responsible for the—I will say in the capacity of foremen, assistant foremen or clerical employees such as office employees.

Q. Those are the type which are excluded?

A. Yes; there is one construction there which would make it possible for an assistant foreman or assistant foremen to be members but the provision in the Constitution is such as to the membership itself, as to except them.

Q. The type which would be eligible for membership would include all production and maintenance employees?

A. Yes; that is right.

Q. Who is the president of the International organization, do you know?

A. Harold J. Pritchett. [671]

Q. Mr. Pierson, I hand you what is marked Board's Exhibit No. 5 for identification and ask you what those are.

A. Those are applications for membership in the International Woodworkers of America. These particular cards have been issued and signed for membership in Local 119.

Q. Is that the usual type of card issued by the International?

A. Yes; it is the universal card issued by all the local unions of the International, they are all the same.

(Testimony of Adam L. Pierson.)

Q. Have the cards which constitute Board's Exhibit No. 5 for identification ever been in your possession? A. Yes.

Q. And have they, after having been in your possession, did you deliver them out of your possession to anyone?

A. To the Local business agent at the Sandpoint District.

Q. Who is that?

A. It was at that particular time Herbert Johnson.

Q. Who did you deliver them over to?

A. Herbert Johnson. I might explain if there is no objection, Mr. Examiner, I might point out the reason for the Local——

Trial Examiner Hektoen: Just one minute. Please answer the questions.

Q. (Mr. Walker): Has Local 119 at the present time a business agent? A. Yes.

Q. Who is he? [672]

A. Mr. Wes Raynor.

Q. Now did you at any other time receive cards which constitute Board's Exhibit No. 5 for identification into your possession?

A. I don't understand the question.

(Thereupon the last question was read.)

A. With the exception of the time I referred to in Mr. Johnson's case, the question I answered before was with relation to how I got possession of the cards in the first place.

(Testimony of Adam L. Pierson.)

Q. The cards were delivered to you by the International; is that correct?

A. The first cards; yes, sir; before they signed?

Q. That is what I mean. Then when you received them from the International, what did you do with them?

A. We issued them to the business agent.

Q. What did the business agent do with them after he had gotten the cards from you?

A. He had the cards signed and turned them into the local for acceptance.

Q. And after the cards were turned into the Local, where were they kept?

A. They were kept at this one particular meeting and voted on. They have to be voted on for membership.

Q. I mean after Mr. Johnson got the cards signed, he turned them back to you or the Local?

[673]

A. Yes.

Q. Did they remain in the Local's possession then after that? A. For a period of time, yes.

Q. After the period of time was up, what did you do with them?

A. They were turned back to the new business agent elected by the sub-local.

Q. Who was that? A. Wes Raynor.

Mr. Walker: That is all.

Cross Examination

Q. (Mr. Hunt): When did Mr. Herbert Johnson sever his relations with Local 119?

(Testimony of Adam L. Pierson.)

Mr. Walker: Objected to as improper cross examination.

Trial Examiner Hektoen: Objection sustained.

Mr. Hunt: It was in evidence on direct examination that Mr. Herbert Johnson was the local business agent and now it is Mr. Wes Raynor.

Mr. Walker: He may have other relations with Local 119.

Trial Examiner Hektoen: He is now out of it completely, apparently.

Q. (Mr. Hunt): Has Mr. Herbert Johnson any other official relations with Local 119?

A. He is still a member of Local 119.

Q. Is he an officer of Local No. 119? [674]

A. I would like to say this, he is still a member; while it is true he has not been dropped as business agent.

Q. He still is a business agent?

A. He still holds an official position with us; yes.

Mr. Hunt: That is all.

Q. (Trial Examiner Hektoen): When talking about the cards you said they were application cards and then you said something else. What was it, do you remember?

(No answer.)

Trial Examiner Hektoen: Mr. Walker, do you know what I mean?

Mr. Walker: I will ask the question.

Redirect Examination

Q. (Mr. Walker): Are the cards which are

(Testimony of Adam L. Pierson.)

marked Board's Exhibit 5 for identification used for any purpose in addition to serving as application cards?

A. Yes, I would say they have some other purpose.

Q. What other purpose?

A. It specifically states on the card, "I hereby designate the International Woodworkers of America, Local 119, as my sole collective bargaining agent."

Q. What other purpose do the cards such as those exhibited by Board's Exhibit No. 5 for identification, serve in addition to serving as application cards?

A. It gives Local No. 119 the position of a collective bar- [675] gaining agent without the membership being fully paid up.

Mr. Walker: That is all.

(Witness excused.)

WES RAYNOR,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. You reside in Sandpoint, do you?

A. Yes, sir.

Q. Are you the individual that Mr. Pierson referred to in his testimony?

A. Yes, sir.

(Testimony of Wes Raynor.)

Q. I hand you Board's Exhibit No. 5 for identification and ask you if you know what these are.

A. They are application cards for membership in the International Woodworkers of America.

Q. Are the cards contained in Board's Exhibit No. 5 for identification cards which have ever been in your possession? A. Yes.

Q. From whom did you receive them?

A. From Adam L. Pierson.

Q. That is the individual who just testified?

A. Yes.

Q. And he is president of Local No. 119?

A. Yes. [676]

Q. Have they been in your possession ever since they were delivered to you by Mr. Pierson?

A. Yes, sir.

Q. Have they been in your possession at all times since they were delivered over to you by Mr. Pierson? A. Yes.

Q. At all times? A. Yes.

Q. Except when you delivered them over to me?

A. Yes.

Mr. Walker: That is all.

Cross Examination

By Mr. Hunt:

Q. When did you receive the cards?

A. Sometime in August, 1939.

Mr. Hunt: That is all.

Redirect Examination

By Mr. Walker:

Q. One thing more, Mr. Raynor. I hand you

(Testimony of Wes Raynor.)

a document consisting of two sheets of paper. Will you state what that represents? Will you please mark this Board's Exhibit No. 7 for identification.

A. That refers to the Union members that were in the Long Lake Lumber Company camp in Caribou in 1939.

(Whereupon the document hereinabove referred to was marked Board's Exhibit No. 7 for identification.) [677]

Q. Does it represent a listing of the names of the individuals whose names are set out on the cards marked Board's Exhibit No. 5 for identification?

A. Yes, sir.

Q. Was that list prepared under your direction?

A. Yes, sir.

Q. When was it prepared?

A. About two weeks ago.

Q. Has that listing been checked with the cards themselves, this package marked Board's Exhibit No. 5 for identification?

A. Yes.

Q. Did you do that?

A. Yes.

Mr. Walker: That is all. We offer in evidence these cards marked Board's Exhibit No. 5 for identification and we request that the listing of the names of the individuals set out on such cards marked Board's Exhibit No. 5 for identification may be substituted in lieu of the originals. It is offered in evidence, being Board's Exhibit No. 7 for identification.

Mr. Hunt: To which we object. We have no objection to copies being substituted, but we do ob-

(Testimony of Wes Raynor.)

ject to substituting the names on the list for the membership cards. It would be no trouble to make copies of the printed cards; but the entire bunch of cards marked as Exhibit No. 5 is in evidence, and we ask that they make a complete copy of them, and that [678] the same be substituted.

Mr. Walker: May it be understood that the paper may be used for greater legibility of the signatures?

Trial Examiner Hektoen: Yes. Board's Exhibit No. 5 for identification is admitted without objection and copies of the cards may be substituted for the original, and such substituted copies, together with the listing just substituted will then be substituted as Board's Exhibit No. 5 in evidence.

Mr. Hunt: May the record show the signatures on the cards, that the E. E. Hunt is not myself but someone else?

Trial Examiner Hektoen: Certainly.

(Thereupon the document heretofore marked Board's Exhibit No. 7 for identification and the cards heretofore marked Board's Exhibit No. 5 for identification, were received in evidence as Board's Exhibit No. 5.)

BOARD'S EXHIBIT No. 5

NAME	DATE OF INITIATION	[See Note]	
✓O. W. Haney✓	June 8, 1939		
✓Grant Robinson✓	June 8, 1939		
✓Amon Garvin✓	May 28, 1939	1	1
✓Hjalmar Olson✓	June 2, 1939	2	2

(Testimony of Wes Raynor.)

NAME	DATE OF INITIATION	[See Note]	
✓Arthur Feoco✓	July 6, 1939	2	
✓Ralph Feoco✓	July 6, 1939	4	
✓Robert C. Yeazel✓	June 2, 1939	5	3
✓Fred Williams✓	April 31, 1939	6	4
✓Burnell N. Lang✓	June 3, 1939	7	5
✓Clifford Joseph✓	June 5, 1939	8	6
✓Greg Moore✓	May 28, 1939	9	7
✓Dale Greer✓	April 30, 1939	10	8
✓Leon Wise✓	May 29, 1939	11	9
✓Charles A. Lisle✓	June 4, 1939	12	10
15Ray C. Stevens✓	June 2, 1939	13	11
✓Andrew Leroy Swenson✓	June 5, 1939	14	12
✓Curtis P. Peterson✓	June 3, 1939	15	13
✓Stanley Harder✓	June 8, 1939		
✓Jack Waffle✓	June 6, 1939	16	
✓Martin Hansen✓	May 28, 1939	17	14
✓Charles C. Dingley✓	June 1, 1939	18	15
✓A. J. Burford✓	June 2, 1939	19	16
✓Joel Joseph✓	June 9, 1939		
✓Clyde I. Smith✓	June 2, 1939	20	17
✓Charles Stevenson✓	May 29, 1939	21	18
✓Neil Mardis✓	June 3, 1939	22	19
✓Ted Earley✓	May 28, 1939	23	20
✓J. D. Finley✓	June 2, 1939	24	21
✓Ralph Peterson✓	May 28, 1939	25	22
✓Clinton Phillips✓	June 5, 1939	26	23
✓Boyd Stevens✓	May 28, 1939	27	4
✓Granville Robinson✓	May 29, 1939	28	5
✓Harry Garvin✓	June 5, 1939	29	6
✓Charles Brodine✓	June 2, 1939	30	7
✓John J. McCann✓	May 29, 1939	31	8
✓Frank Moore✓	June 1, 1939	32	9
✓Nathan Way✓	June 6, 1939	33	
✓A. W. Evans✓	June 2, 1939	34	30
✓U. E. Kirtley✓	June 3, 1939	35	1
✓Robert Monett✓	May 29, 1939	36	2
✓Dwight E. Miller✓	June 6, 1939	37	
✓Robert Barwise✓	June 1, 1939	38	3
✓George A. Keller✓	July 5, 1939	39	4
✓James Doyle✓	July 1, 1939		5

(Testimony of Wes Raynor.)

NAME	DATE OF INITIATION	[See Note]	
✓Harry Courser✓	June 3, 1939	40	6
✓Guy L. Coulston✓	June 11, 1939		
✓Frank Murphy✓	June 9, 1939		
✓Ernest Berger✓	June 6, 1939	41	
✓C. J. Sage✓	June 5, 1939	42	7
50✓Albert Faurot✓	May 29, 1939	43	8
✓William Henry✓	May 28, 1939	44	9
✓Glen Moore✓	June 1, 1939	45	40
✓Elmer Kurwitz✓	June 11, 1939		
✓H. A. Sperber✓	June 5, 1939	46	1
✓C. E. Twist✓	June 6, 1939	47	
✓Cecil Porter✓	June 7, 1939		
✓Walter J. Waffle✓	June 20, 1939		
✓Jack Tillman✓	June 8, 1939		
✓Elmer Anderson✓	June 8, 1939		
✓Harold Hunt✓	June 8, 1939		
✓Herbert Hunt✓	June 8, 1939		
✓William Kannady✓	July 7, 1939		
✓George Busha✓	August 15, 1939		
✓Chaney Byfield✓	June 10, 1939		
✓Al Stutz✓	June 11, 1939		
✓Alex Stockman✓	June 5, 1939	48	2
✓Neil Arneson✓	June 5, 1939	49	3
✓Ivan Smith✓	June 24, 1939		
✓Harry Gunsalus✓	June 12, 1939		
70✓Max Crooker✓	June 5, 1939	50	4
✓Arlie G. Chaney✓	June 6, 1939	51	
✓Cecil Runyon✓	June 12, 1939		
✓Clarence Boylan✓	May 31, 1939	52	5
✓B. J. Durick✓	June 4, 1939	53	6
✓Charles Berry✓	June 6, 1939	4	
✓Victor Norman✓	June 6, 1939	5	
✓Morie Sperber✓	June 5, 1939	6	7
✓Al Hendrickson✓	June 6, 1939	7	
✓C. C. Sperber✓	June 5, 1939	8	8
✓Joe F. Dobrovec✓	June 5, 1939	9	9
✓Fred Chaney✓	June 12, 1939		
✓Cecil Chaney✓	June 12, 1939		
✓Earl Murphy✓	June 9, 1939		
✓Sidney Moody✓	May 29, 1939	60	50
✓Glen Brodine✓	June 6, 1939	1	

(Testimony of Wes Raynor.)

NAME	DATE OF INITIATION	[See Note]	
✓William Miller✓	July 5, 1939	2	1
✓Herman Helander✓	June 15, 1939		
✓Theodore Rockwell✓	June 6, 1939	3	
✓Burton Lutes✓	May 29, 1939	4	2
✓Arehie Peterson✓	June 4, 1939	5	3
✓Emery Hunt✓	May 20, 1939	6	4
92✓Jesse Nichols✓	June 7, 1939		

[Printer's Note]: Figures in last two columns written in pencil on typewritten sheet.

FRANK MOR,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. What is your name?

A. Frank Mor.

Q. You reside in Sandpoint? A. Yes.

Q. What is your occupation? [679]

A. Woodwork, I work in the woods.

Q. What type of woods work do you do?

A. Anything I can get to work at.

Q. Did you do any woods work in the operative season of 1939? A. Yes.

Q. When did you do that?

A. I did it for the Long Lake Lumber Company.

Q. What kind of work did you do?

A. I was skidding poles.

Q. Do you remember the incident of the camp closing down in June, 1939?

(Testimony of Frank Mor.)

A. Yes, I remember that.

Q. Do you know Frank Robinson?

A. Yes, you bet I do.

Q. Do you know of a place called The Diamond?

A. Yes.

Q. Where is that situated?

A. Down here a couple of blocks.

Q. In Sandpoint? A. Yes.

Q. At any time after the camp closed in June, 1939, did you see Mr. Robinson?

A. Yes, I did.

Q. Where did you see him? [680]

A. I saw him at The Diamond.

Q. About when was that with respect to the time that the camp closed down?

A. Oh, a little while after that.

Q. How many days had passed between the time when the camp closed down and when you next saw Mr. Robinson?

A. Oh, it was about four or five or six days, I would reckon.

Q. Did you have a talk with Mr. Robinson?

A. No; I didn't talk to him; I went to the lavatory and he was there with a fellow named Kirtley.

Q. (Trial Examiner Hektoen): Is this at The Diamond?

Mr. Walker: This is at the Diamond.

Q. Did you say anything to Mr. Robinson?

A. No, I didn't.

Q. Did he say anything to you? A. Yes.

(Testimony of Frank Mor.)

Q. What did he say?

A. He said, that is what you are down here for, because you signed up with the C.I.O.

Q. He said "That is what you are down here for because you signed up with the C.I.O.", is that correct? A. Correct.

Q. Did you say anything to him?

A. Well, I said, "That is why you are down here too, be- [681] cause you did not sign up with the C.I.O."

Q. You said, "That is why you are down here too, because you did not sign up with the C.I.O.", is that correct? A. Yes.

Cross Examination

By Mr. Hunt:

Q. You went back to work for Mr. Robinson shortly after that?

A. No, quite awhile after that.

Q. About the 25th of July?

A. The 25th of July; yes.

Q. And you worked until the 12th of October? A. Yes.

Q. And you got hurt then? A. Yes.

Q. And you are using the crutch now as a result of that same injury you sustained on October 12th?

A. Yes; I have been laid up.

(Witness excused.)

(Thereupon at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Hektoen: Come to order, please.

FRED CHANEY,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination [682]

By Mr. Walker:

Q. What is your name? A. Fred Chaney.

Q. You reside in Sandpoint, Idaho, Mr. Chaney?

A. Yes.

Q. What is your occupation?

A. Woods worker.

Q. How long have you been engaged in woods working? A. Say five or six years.

Q. During that time what different phases of woodwork have you done?

A. The most of my woodwork has been in the pole yard on cedar.

Q. Have you ever worked at Caribou?

A. I have.

Q. When did you first start there?

A. In 1938.

Q. What did you do at that time?

A. I was logging.

Q. How long did you work in the 1938 season?

A. The entire season, I believe.

Q. How did you get on that job?

A. A contract with Mr. Robinson.

Q. At the conclusion of the season did you see Mr. Robinson? A. I did.

Q. Did you have a talk with him at that time?

[683]

(Testimony of Fred Chaney.)

A. Yes.

Q. Will you state what you said?

A. Well, among other things he did say that he was well satisfied with my operations, as I had done a good, clean job.

Q. After the 1938 season did you ever again work at Caribou? A. I did.

Q. And when did you next work there?

A. When?

Q. Yes. A. In 1939.

Q. About when did you start in in 1939, do you recall?

A. I would not say the date; it was along around the last of May or the first of June.

Q. What type of work did you do in 1939?

A. Logging, skidding logs. •

Q. Where were you situated in 1939?

A. Well, our camp is on the main road.

Q. When you say "our camp", what do you mean by that? A. My camp.

Q. You didn't stay at the main camp?

A. No.

Q. Do you know Jim Morrow? A. I do.

Q. Do you know where Jim Morrow was situated in 1939? A. Yes. [684]

Q. Where were you located with respect to the Morrow location?

A. Three or four hundred yards or a quarter of a mile down the road on the main road.

Q. How did you go about this logging work, will you describe it, what you did?

(Testimony of Fred Chaney.)

A. Our job was to skid the logs and load them on trucks.

Q. Was that all that was required to be done by you?

A. Well, only we have to make our own trailers naturally.

Q. Did you have anything to do with the falling and bucking? A. No.

Q. How did you do your skidding?

A. With horses.

Trial Examiner Hektoen: With what?

The Witness: Horses.

Q. (Mr. Walker): Whose horses were they?

A. My own.

Q. After you arrived at your location did you see Mr. Arden Davis at any time?

A. Oh, yes, I did; at the camp, of course.

Q. Do you remember the incident of the camp closing down in June, 1939? A. I do.

Q. After you arrived at your location did you make any arrangements with Mr. Davis at any time relative to the supplies [685] required for the operation of your enterprise? A. I did.

Q. About when did you do that with respect to the event of the closing of the camp?

A. I did that when we first started to work in the beginning, at the beginning of the season of 1939.

Q. What arrangement did you make with him?

A. The arrangement I made with him was to furnish me with hay and grain for my horses.

(Testimony of Fred Chaney.)

Q. Did you receive your supplies?

A. I did.

Q. About when did you receive those supplies with respect to the event of the closing of the camp?

A. Well, we received our first supplies when we first started to work, naturally, we had to have supplies for the horses, and then we received them right along whenever we needed them.

Q. With respect to the time the camp closed had you preceding that received some hay and oats?

A. We had.

Q. Did you learn of a Union meeting being held at the camp? A. Yes.

Q. At the time the meeting was held did you know of it? A. No.

Q. Upon the day there when the camp closed down, did you [686] work?

A. Yes, part of the day, anyway, part of the day.

Q. About what time of the day did you cease to work?

A. I can't just get those dates exactly in my mind; I would not attempt to say exactly.

Q. I don't care about the date, but you do recall the day upon which the camp closed?

A. Yes.

Q. On that particular day, you worked all of the day?

A. Yes, I can't say whether all day or not.

(Testimony of Fred Chaney.)

Q. About what time during that day did you cease to work?

A. Well, I can't say positively on that; it was along in the middle of the afternoon.

Q. With respect to the time when you ceased to work on that day, when did you first learn that the camp had closed?

A. Some time during the morning.

Q. How did it come to your attention?

A. I don't know how it came to my attention, but someone came down from the camp and told me that everything was all through.

Q. After you ceased work that day did you see Mr. Robinson at any time?

A. I don't know whether I saw him and had a talk with him that day or not; I would not say positively.

Q. After you had ceased working what did you do? [687]

A. Well, I did see Mr. Robinson after that sometime; I don't know whether that day or the next day.

Q. Did you have a talk with him then?

A. Yes.

Q. Will you relate what was said, please?

A. One thing he made arrangements about was, I could put my horses down in his pasture.

Q. You did make those arrangements with him?

A. Yes.

Q. And was there anything else said?

A. At that time?

(Testimony of Fred Chaney.)

Q. Yes, at that time, if you can recall.

A. Nothing particular that day.

Q. Have you any further recollection of anything which was said than the arrangement of putting the horses in the pasture?

A. Not at that time.

Q. Did you see Mr. Robinson again after that?

A. That day?

Q. That day; yes.

A. No, not that I know of.

Q. Did you see him again after that day at any time?

A. I saw him lots of times and had lots of conversations with him.

Q. What conversation, if any, did you have with Mr. Robinson the next time you saw him, if you can recall that? [688]

A. Well, I don't know as I could describe our conversations; we had so many of them during the time it was closed down; that is when you mean?

Q. Yes.

A. We had a lot of conversations, many times.

Q. Can you recall any conversation?

A. Well, one conversation I had with him. It was a little late, and pretty close to the time when they started to get ready to start up. I contacted him several times trying to get back on. One conversation was that he was—they were getting ready to open the camp again and I asked him downtown one day if he was going to put everybody

(Testimony of Fred Chaney.)

back on again, I was thinking of myself naturally. He said yes, he would put most everybody back on that he wanted on and he did say that he might put some on that would not later on be so hard to find an excuse to let them go again.

Q. How did that conversation come up, Mr. Chaney?

A. Well, I met him on the street at Sandpoint and asked him about getting back on.

Q. After this conversation did you ever go up to or up toward the camp?

A. Yes, I think so; I was up to the camp after that.

Q. Have you a son named Arlie Chaney?

A. I have.

Q. He went up toward the camp with you? [689]

A. I think, if I remember rightly it was my own place, if I remember right; I don't remember whether I went up there with Arlie or not.

Q. Did you go to the camp that day that you are speaking of now?

A. Yes, I think I did, I went to camp.

Q. Did you work that day? A. No.

Q. Did you see Mr. Robinson that day?

A. I remember seeing him, I didn't have any conversation with him.

Q. After that particular time was there any other time when you went up toward the camp?

A. I was there, up there on the road; yes, sir.

Q. Who went with you on that day?

A. I believe I went up with Arlie that day.

(Testimony of Fred Chaney.)

Q. Did you see anyone when you arrived on the roadway? A. Yes, I did.

Q. Who?

A. I could not name them all; there was quite a crowd.

Q. Did you see Mr. Robinson that day?

A. Yes.

Q. Will you describe what occurred as you drew up on the roadway there?

A. Well, there was quite a crowd on the road and the Caribou [690] Bridge seemed to be the dividing line between the two partisans. There was a bunch of people there who appeared to be Union men and Mr. Robinson was on this side of the creek with a bunch there and he wanted to know if I wanted to go up and go to work.

Q. Who said that?

A. Mr. Robinson. I said, yes, like the rest of the boys, we would come to work if we could. And he said, "Come on, here is the road; hitch your horses and we will go up." I looked up the road and said, "I don't think I would like to go up there; that crowd up there; there will be trouble; I am afraid. I don't believe it would do any good. I don't think I could make it."

Q. What did Mr. Robinson say?

A. He said he would protect me if I wanted to go up and see I got through with the horses all right.

Q. Did he do anything in that regard?

(Testimony of Fred Chaney.)

A. He offered to; offered to clear the road.

Q. Was there any obstruction on the road at the time? A. Only the men.

Q. Did Mr. Robinson have his car there?

A. He did.

Q. Go ahead and relate what else occurred.

A. Well, among other things he asked my son if he wanted to go up and haul logs tomorrow; he had not a truck there; and [691] he said, like I did, he would not go through the picket line until they had made some kind of settlement amongst all of them.

Q. At any time you were by the bridge did Mr. Robinson leave?

A. He was up there two different times, I believe, and did at one time come back to town.

Q. After that did he return again to the bridge?

A. Yes.

Q. Was there anyone with him?

A. I think he brought Mr. Ratt up one of the times; he brought Ratt up; which time it was, I don't know.

Q. After Mr. Ratt arrived what took place?

A. Well, Mr. Ratt wanted to know of me whether I wanted to go to work.

Q. You were talking with Mr. Ratt, were you?

A. Yes, sir; he came and asked me, he said, "Do you want to go up; do you want to go up the road and go to the camp and go to work?" And I said, "Yes."

Q. Where was Mr. Robinson at the time?

(Testimony of Fred Chaney.)

A. He was near right by there. I said "Yes; I want to go to work, but I don't want to go to work until they get this thing settled." He said, "But, evidently, you don't want to go to work." I said, "I do, but I want it settled satisfactory so we can work in peace." He said, "If you [692] want to go through there I will open the road for you." I said, "I don't want to go that way."

Q. During any time that Mr. Ratt was there at the bridge was there anything else said about the Union?

Mr. Hunt: (Interrupting) By whom?

Q. (Mr. Walker) By Mr. Ratt.

A. Well, he did ask me if I was in sympathy with the Union or not.

Q. Did Mr. Ratt at that time say anything to any of the group who were on the east side of the bridge?

A. He wanted to know if the bunch—if they did belong to the Union or were in sympathy with the Union.

Q. Did he ask the group on the east side of the bridge to do anything to indicate whether or not they were in sympathy with the Union?

A. I don't remember it; I can't say that he did.

Q. What was Mr. Robinson doing during this time?

A. Well, he was doing quite a little storming up and down the road?

Q. Did he say anything?

(Testimony of Fred Chaney.)

A. Quite a lot.

Q. Can you recollect what he said while walking on the road? A. I don't remember it.

Q. Did *he* see Mr. Wise there? [693]

A. Yes.

Q. By the bridge? A. Yes.

Q. Did Mr. Wise have a conversation with Mr. Robinson? A. Yes, they did.

Q. Were you present?

A. No, not when they had it. Mr. Ratt asked Mr. Robinson if him—if Mr. Robinson, Mr. Wise, Mr. Johnson and himself would not go out on the bridge, which seemed to be the dividing line, and talk the thing over and try to settle it, just the four of them, and they did go up and have a conversation. But I was not present because I was not invited and I don't know what the settlement was but it didn't seem to be very satisfactory.

Q. At any time during this time that Mr. Ratt was there did Mr. Ratt say anything to Mr. Robinson other than attempting to get him to meet with Mr. Wise?

A. Well, he did say that, Mr. Ratt said to Mr. Robinson, "Apparently these boys don't want to go to work, they seem to be in sympathy with the Union, and under the circumstances—there is no violence going on—I cannot see any violence going on; there seems to be nothing else for me to do." And he proceeded to get ready to go back to town.

(Testimony of Fred Chaney.)

Q. How did Mr. Ratt know that the group on the east side of the bridge were in sympathy with the Union? [694]

A. Well, he asked them, I believe.

Q. He asked the group?

A. Whether they were in sympathy with the Union or not; they were not all Union men, you understand.

Q. Did Mr. Ratt ask the group on the east side of the bridge to demonstrate in any manner whether or not they were in sympathy with the Union?

A. Yes, I think he asked them if they would take a vote.

Q. How?

A. By raising their hands—all in sympathy with the Union.

Q. Did the men on the east side do that?

A. Yes.

Q. Did Mr. Robinson say anything when that occurred?

A. I could not say as to the words used but I think he said, it seems to me as if they are pretty much in sympathy with the Union; there wasn't very many dissenting votes, if any.

Q. At any time while Mr. Robinson was on the bridge after Mr. Ratt had told the group to raise their hands, did Mr. Robinson say anything referring to the C.I.O. in name?

A. Well, I don't know, I did say he said he would not recognize the Union.

(Testimony of Fred Chaney.)

Q. Now let's go back to this last day you worked there at the camp, the day on which the camp closed—strike that—Upon that day did you observe whether or not there was any [695] cars or group of cars driving on the main roadway by that camp? A. Yes, there was.

Q. You saw that, did you? A. Yes.

Q. Quite a group of cars were there?

A. Yes, several.

Q. Which way were they driving?

A. Is that the day the camp closed?

Q. Yes.

A. They were coming down the hill.

Q. About what time? A. Well——

Q. About what time was it when you saw the cars coming down the hill?

A. I don't remember just what time of day it was.

Q. You had taken breakfast, had you?

A. I think so.

Q. And were already out on the job?

A. I think so.

Q. And did they, or did you have any curiosity as to why the cars were going down the hill?

A. I had heard they had been closed down.

Q. When you heard that did you have any curiosity as to why the camp was closed down?

[696]

Mr. Hunt: I will have to object to such an immaterial question. I think for him to state what was done by his place is better.

(Testimony of Fred Chaney.)

Trial Examiner Hektoen: That is what we are trying to get at and the witness has some difficulty with his memory.

Mr. Walker: Of course, the question alone it has nothing much to it but I am trying to refresh his memory.

(Thereupon the last question was read.)

A. I had heard that they had had a meeting the night before and that the camp had closed down that morning.

Q. Who did you hear that from?

A. From some of the boys who came down and stopped and told me.

Q. From whom were you drawing your compensation and your pay, in other words, when you were working at Caribou in 1939?

A. Who did I draw my pay from?

Q. Yes.

A. From Frank Robinson.

Q. With respect to the day when the camp closed, when did you receive your pay?

A. I guess it was the next day.

Q. Whose logging equipment were you using on your job? A. My own.

Q. What was done with this hay and oats you received prior at the camp, prior to its closing down? [697]

A. What was left Mr. Robinson sent a truck down and got it and took it up to his barn.

(Testimony of Fred Chaney.)

Q. Had you made any arrangements to deliver that back, the hay and the oats?

A. No, no arrangements.

Q. And the hay and oats were taken back; did you receive any credit for that?

A. Yes; we did on our checks.

Q. Did you have any discussion with anyone about the credit for the hay and oats?

A. I think I did with Arden Davis.

Q. When did you have the discussion with Mr. Davis?

A. It was on the day we got our checks, whenever that was.

Q. Where did you have the discussion with Mr. Davis? A. In his office.

Q. At the camp? A. Yes.

Q. Was Mr. Robinson present?

A. I don't remember that he was.

Q. What kind of car does Mr. Robinson drive up at camp there?

A. I would not say, I know his car, however, it is hard to say.

Q. Is it a sedan? I don't mean the make.

A. I thought you meant the make; I thought you meant the make.

Q. The type? [698] A. A sedan.

Q. Does he drive any other car at the camp sometimes?

A. A pickup sometimes; he drives a pickup.

Q. Is your camp anywhere near the forks in the road?

(Testimony of Fred Chaney.)

A. Right at the forks of the road; that is, one fork of the road; one goes up on the hill.

Q. Have you exhausted your memory on all the events which occurred on the day of the camp closing down?

A. I think I cannot think of anything in particular but might if you refreshed my mind.

Q. After you had ceased your operations on the day on which the camp closed down, didn't you meet Mr. Robinson in his car at the forks of the road?

A. I met him there several times but I can't just get that particular day.

Q. When did you first learn that the Union was being organized at the camp?

A. It was before we—before the meeting, several days before the meeting, when we went up on the side of the hill, we were cleaning up some skidways which we had skidded in 1938 and my son was hauling the logs and he had been approached by several of the men at different times asking him to join the Union, the whole camp, rather; they had never asked me because they had never contacted me but they asked him and he had put the proposition up to me and asked me and the rest in the camp [699] what we thought about it; he did not want to join it unless they all joined it; and we had a discussion over it. He didn't know just what to do, whether to join or not. In other words, we wanted to work, we didn't want to make any enemies on their side; we wanted

(Testimony of Fred Chaney.)

to be friends with all of them. And we were one day cleaning up the line on the skidways and Mr. Robinson came up in the pickup. I don't remember who was with him at this time, probably his son. And I asked him what he thought about it, whether we should join the Union, I wanted his opinion. He said he could not advise us; we would have to use our own judgment, and he asked me who was agitating it, who had been talking to me. And I said no one had been talking to me only Arlie, my son, but there had been men approaching him, several of them had asked him to join. And he asked who they were and I told him to the best of my ability who approached him.

Q. Did Mr. Robinson ever tell you that the Union had held a meeting at the camp?

A. I don't know whether he told me myself or not; he might have, I could not say positively.

Q. Did you ever learn what the demands of the Union Committee were which were presented to Mr. Robinson on the night when the Committee met Mr. Robinson?

A. Only from hearsay; yes, I heard.

Q. Who did you hear that from? [700]

A. I could not say exactly, I just heard the boys discussing it, what they were asking for; among other things was a roof; I would not say who, I don't know of any particular one; some were talking about it.

Q. At any time did Mr. Robinson discuss with

(Testimony of Fred Chaney.)

you what demands were made upon him by the Union?

A. He might have; I cannot just recall.

Q. Did Mr. Robinson at any time ever make a statement to you as to whether or not he would recognize the Union? A. Yes.

Q. Other than this time down on the road when Mr. Ratt was there? A. Yes, sir; he did.

Q. What did he say in that regard?

A. He said he would not recognize it.

Q. What else?

A. At one time, I don't know just exactly, it wasn't right at that time; at another conversation he said, he would kill the damned Union any-way.

Mr. Walker: That is all.

Trial Examiner Hektoen: Do you want to proceed now or do you wish to adjourn?

Mr. Hunt: We have to cross examine.

Q. (Trial Examiner Hektoen) Who was the man who went on the bridge to have the conversation at the time? [701]

A. Mr. Robinson and also Mr. Ratt and Mr. Johnson.

Q. And Mr Wise? A. Mr. Wise.

Trial Examiner Hektoen: Don't talk about this to anybody during the lunch hour. We will be back at 1:30 p. m.

(Whereupon at 12 noon, the hearing was recessed until 1:30 p. m.) [702]

Afternoon Session

(Whereupon the hearing was resumed, pursuant to the taking of noon recess, at 1:30 o'clock p. m. as follows:)

Trial Examiner Hektoen: Proceed, gentlemen.

FRED CHANEY,

resumed the stand and testified as follows:

Cross Examination

Q. (Mr. Hunt) Mr. Chaney, you worked for Mr. Robinson in the season of 1938?

A. Yes, sir.

Q. Most of the season? A. Yes, sir.

Q. And at the end of the year Mr. Robinson said your work had been satisfactory?

A. Yes.

Q. And you went to work for him again in 1939 when the camp opened, skidding?

A. A few days after.

Q. A few days after you were skidding?

A. Yes, sir.

Q. When you went to work for Mr. Robinson in 1939, you had what is generally called a gypo job from him? A. Yes.

Q. Which consisted in giving you a strip of timber where you had complete charge of the logging of that? [703] A. Yes.

Q. Mr. Robinson paid you for your work?

A. Yes.

(Testimony of Fred Chaney.)

Q. And you skidded and were paid for that?

A. Yes, skidding and loading.

Q. He paid you for the sawing?

A. Yes. [704]

Q. After you talked to Mr. Robinson when it was understood that there was some talk about the organizing of the camp, you again talked to Mr. Robinson and asked him what he thought about your joining? A. I did.

Q. And he told you at the time he could not advise you on those matters? A. Right.

Q. Let us go to the conversation wherein somebody told you or said something about recognizing the Union and they were going to call a Union meeting or something to that effect. Did Mr. Robinson make that statement or did Mr. Herbert Johnson say Mr. Robinson had made that statement?

A. Mr. Robinson made that statement.

Q. And he made that statement directly himself? A. Yes, to me.

Q. Did Mr. Johnson quote Mr. Robinson to you relative to what he said relative to the recognizing of the Union?

A. I did not talk to Mr. Johnson very much and I don't think [707] he ever did; I would not be positive.

Q. You saw Mr. Johnson up and down the road?

A. I know him.

Q. There were some dissenting votes at the time

(Testimony of Fred Chaney.)

that Mr. Ratt asked the men for those in sympathy with the Union?

A. I think so. I didn't take a part again.

Q. There was quite a discussion at the picket line one day when you were there? A. Yes.

Q. Did you hear Mr. Ratt say at the time that "When and if the men showed they had a majority in the Union he would recognize the Union, and would not recognize them at all until they showed they had a majority." Did you hear him make that statement or words to that effect?

A. I heard him say something to that effect, but I wasn't paying attention to what it was.

Q. You had no objection to Mr. Robinson taking the hay and grain back to the main camp, when it closed? A. No.

Q. It was the usual and customary thing to do?

A. It was necessary to take it or it would have been spoiled.

Q. When he took it back, he gave you credit for the hay and the oats? A. He did. [708]

EARL DAVIS,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker) What is your name?

A. Earl Davis.

(Testimony of Earl Davis.)

Q. You reside in Spokane, do you? [712]

A. Right.

Q. And what is your occupation?

A. Timber work.

Q. Mr. Davis, have you ever worked at what is commonly called the Caribou Basin?

A. Yes.

Q. When did you first work there?

A. In the Fall of 1937.

Q. What work did you do at that time?

A. Scaling logs.

Q. What kind of logs were scaling?

A. White pine logs at that time.

Q. Do you remember the incident in the white pine operation season, at the end of the year 1937 season, when the camp closed down?

A. The cutters stopped about the same time the camp closed down, or a little before.

Q. Did you continue on in the Caribou Basin after that?

A. Yes, I scaled about a month and a half and continued on with other work after that.

Q. What was the next kind of work you did?

A. Making posts, cedar posts.

Q. How did you happen to take over the cedar job?

A. To have something to do.

Q. Did you make this arrangement with anyone? [713]

A. Yes.

Q. With whom?

A. Mr. Brown.

Q. Mr. Brown, Sr.?

A. Yes; Mr. Brown, Sr. and Mr. Breen.

(Testimony of Earl Davis.)

Q. How long did you continue on the cedar work then?

A. Oh, approximately a year, I guess, until the next fall.

Q. Did you have anyone working with you on that cedar work? A. Yes.

Q. Can you state who they were?

A. Some of them I can: Armon Garvin, Boyd Stevens, Harry worked a few days too.

Trial Examiner Hektoen: Harry Garvin?

The Witness: That is right.

Trial Examiner Hektoen: We have Harry Garvin, Armon Garvin and Boyd Stevens.

The Witness: Mr. Ramsey also worked there, a fellow by the name of Ramsey. They have moved out now.

Trial Examiner Hektoen: Anybody else?

The Witness: Boyd Stevens' brother worked there awhile.

Q. (Mr. Walker) Who showed you where your strip was when you started in on this cedar work?

A. No one showed me.

Q. From whom did you receive your pay?

A. Mr. Robinson. [714]

Q. What was the basis of that?

A. The basis of the pay?

Q. Yes.

A. Well, it was different on different kinds of work; I had posts and logs at different prices.

Q. Were you paid by the thousand?

A. It was all piece work.

(Testimony of Earl Davis.)

Q. At the conclusion of this cedar work, did you ever again work in the Caribou Basin?

A. Yes, I worked there after that.

Q. Were you at Caribou Basin the month of June, 1939?

A. Yes, sir.

Q. Do you remember the incident of the camp closing down in 1939?

A. Yes, sir.

Q. With respect to the day upon which the camp closed down in 1939, when did you first arrive at Caribou?

A. The evening that it closed, the evening the camp closed.

Q. When you arrived at Caribou where did you stay?

A. That night?

Q. Yes.

A. I stayed at one of the smaller camps.

Q. Did anyone or did anything take place at the main camp that night?

A. They had a meeting, a Union meeting. [715]

Q. Did you attend that meeting?

A. I did.

Q. Did you see Mr. Brown, Jr. that evening?

A. Not that I recall.

Q. Were you still at Caribou the next morning?

A. I went back up there the next morning.

Q. Did you see anyone when you arrived at the main camp the next morning?

A. I saw people, of course; it wasn't deserted entirely.

Q. Did you see Mr. Brown, Jr. the next morning?

A. Yes, sir.

(Testimony of Earl Davis.)

Q. Upon arriving at the main camp the next morning, did you have a talk with Mr. Brown, Jr.?

A. I think I did.

Q. Do you recall when that talk took place?

A. In the camp.

Q. What was said at the time?

A. I can't recall anything which was said.

Q. Were the men working that morning, do you know?

A. I think not.

Q. Were the men still around the camp at the time you arrived at the main camp?

A. Some of them.

Q. What were the men doing?

A. Most of them were getting ready to leave.

[716]

Q. You noticed that, did you?

A. It was very evident.

Q. Was there any conversation with Mr. Brown, Jr. respecting that occurrence of the men leaving?

A. No.

Q. Did you inquire of anyone why the men were leaving?

A. No.

Q. Did you have a talk with Mr. Robinson that morning?

A. I don't think so; if he was there, I suppose we spoke, but we had no talk with regard to the trouble.

Q. Did you remain at the camp all that day?

A. No.

Q. Did you leave the camp?

A. I did.

Q. Where did you go?

A. To Spokane.

(Testimony of Earl Davis.)

Q. Prior to the time you left for Spokane did you tell anyone you were going to Spokane?

A. I don't know whether I did or not.

Q. Did you tell Mr. Brown, Jr. you were going to Spokane?

A. I think I did.

Q. Did he make any reply to you?

A. He said I might just as well go.

Q. What else?

A. Until the trouble was settled I might just as well go; I [717] don't know whether he said anything more about it.

Q. When in Spokane did you make any calls at the Long Lake Lumber Company's office?

A. Yes.

Q. Did you see any of the officials of the Long Lake Lumber Company when you arrived at the office?

A. You always see them there.

Q. Who would that be?

A. Mr. Brown.

Q. Dave Brown or Mr. Brown, Sr.?

A. Some of them.

Q. Or both?

A. Yes, I saw both of them during that day.

Q. Did you have any talk with Dave Brown or Mr. Brown, Sr. or both of them or either of them at any of these calls at the Long Lake Lumber Company's office respecting the Caribou operations?

A. I talked to Jim Brown, Sr. about it.

Q. What was the conversation?

A. It would be hard to recollect it now.

Q. Can you give the substance of it?

(Testimony of Earl Davis.)

A. He wanted to know what I knew about the trouble which had happened, what I knew about it and in regard to that meeting.

Q. What was it about the meeting he inquired?

A. That is the extent of it, I guess. [718]

Q. At the Union meeting that night at the camp, the Union elected a Committee, did they?

A. That is right.

Q. After the Committee was elected, what did the Committee do?

A. It went up to see Mr. Robinson.

Q. When you were in the Long Lake Lumber Company office with Mr. Brown, Sr., talking to him, was there any reference made to that occurrence in your conversation?

A. Not that I recall.

Q. What did the Union membership send the Union's Committee to call on Mr. Robinson about?

A. I don't know about that.

Q. Did the membership discuss some of the demands relative to the conditions of the camp to be presented to Mr. Robinson?

A. Yes, they said they would first get him to recognize the Union and present their grievances later, after he recognized the Union; then that would be some time later. I think that—I think they had some too that night.

Q. When you were in the Long Lake Lumber Company's office talking to Mr. Brown, Sr., was there any reference made to any demand made upon Mr. Robinson by the Union Committee?

(Testimony of Earl Davis.)

A. I cannot tell whether there was or not.

Q. Do you know who constituted the Union Committee that night, the individuals?

A. No, I was there when they elected them but I don't know [719-720] them.

Q. You remember Mr. Boyd Stevens?

A. Yes.

Q. He was one of them?

A. Yes; and Mr. Wise was one of them.

Q. At this time in the Long Lake Lumber Company's office was there any inquiry from Mr. Brown respecting who constituted the Union Committee? A. I don't think so.

Q. Did you volunteer and tell him who the individuals were which constituted the Union Committee? A. I don't know.

Q. Did Mr. Brown, during that conversation, make any inquiry about the conditions at that camp? A. No.

Q. Had you signed a card in the Local that night? A. No.

Q. Was there any discussion between yourself and Mr. Brown, Sr. as to whether or not you were a member of the Union?

A. I think he asked me once but I am not sure whether it was this time or not; he asked me once why I didn't join it.

Q. After this time that you have just described when you were in the Long Lake Lumber Company's office, did you call at the Long Lake Company's office again?

(Testimony of Earl Davis.)

A. I was in there several times during this time but I don't [721] know.

Q. During the interval when you were in Spokane had you received a formal offer of any other employment?

A. Yes, I had chances to go to work and I did do some work.

Q. Did you have a discussion with Mr. Brown, Sr. about that other work at any time during the period you were in Spokane? A. Yes.

Q. What was the discussion?

Mr. Hunt: Objected to as immaterial.

Trial Examiner Hektoen: Let the question be answered subject to that objection and a subsequent motion to strike the answer.

A. Yes, sir.

Q. (Trial Examiner Hektoen) What was the discussion?

A. He told me he thought the trouble up here would be settled; that it would be a long job, and that I had better wait for that.

Q. (Mr. Walker) Did you have a discussion with Mr. Robinson about the Union at any time?

A. No.

Q. Now, Mr. Davis, can you recall anything further which was said between yourself and Mr. Brown, Sr. during any of your calls at the Long Lake Lumber Company's office during the period which you were in Spokane? A. No. [722]

Q. Mr. Davis, at the time you called at the Long Lake Lumber Company's office during the period

(Testimony of Earl Davis.)

when you were in Spokane and conferring with Mr. Brown, Sr., did Mr. Brown state to you that he wanted you to tell him the truth, regardless of who was hurt? A. That is right.

Q. And he also at that time asked you about camp conditions? [726] A. No.

Q. At that time did he ask you about the Union demands?

A. I think that was it; I think he did.

Q. And at that time you told him what the Union demands were? A. Yes.

Q. And he also asked you at the time who constituted the Union's Committee?

A. I would not be sure of that.

Q. Mr. Davis, I hand you what is marked Board's Exhibit No. 7 for identification and call your attention to the next to the last sentence on the 5th paragraph of the 1st page thereof.

A. Well, the conversation was along that line, I would not say for sure.

Q. Along what line?

A. About the troubles; I would not say for sure whether he—whether it was the camp conditions or the conditions of the demands made; maybe both.

Q. Does it refresh your memory now that Mr. Brown, Sr. asked you who the individuals were who constituted the Union Committee and that you told him?

A. I would not say whether he did or not.

Q. Referring to the next to the last sentence in

(Testimony of Earl Davis.)

the 5th paragraph of the first page of what is marked Board's Exhibit 7 for identification.

A. Where is that? [727]

Q. I am sorry.

(Counsel points out to the witness the sentence on which he is interrogating.)

A. That has been quite a long while ago, since that conversation took place.

Q. Is your memory now refreshed?

A. No, I would not want to say one way or the other what took place, what the conversation was; it was along those lines and it might be.

Q. You have just now refreshed your memory by referring to the next to the last sentence of the 5th paragraph of the 1st page of what is Board's Exhibit No. 7 for identification.

A. Yes.

Q. And you just now read it?

A. Yes.

Q. Does it refresh your memory that Mr. Brown, Sr. at that time in the office asked you who constituted the Committee and that you told him?

Mr. Potts: I object to the repetition and also to the question as improper cross examination and beyond the prohibited period for confronting him with the prior statement.

Trial Examiner Hektoen: Overruled.

(Thereupon the last question was read.)

A. No, I would not say I signed a statement to that effect but I don't say—it was along those lines but not what—I [728] would not swear I told him that.

(Testimony of Earl Davis.)

Q. (Mr. Walker) That has really been some time ago, but did you make the statement to Mr. Roll on the date it says? A. Yes.

Mr. Potts: What is that statement dated?

Mr. Walker: I am sorry; October 18, 1939.

Cross Examination

Q. (Mr. Potts) Mr. Davis, how did you happen to be at Caribou camp in the early part of June, 1939; were you working there at the time?

A. June, 1939?

Q. June, 1939.

A. I went up there to go to work.

Q. But you had not started to go to work?

A. No.

Q. Do you recall just about how long you had been there before the camp closed down or when it closed down?

A. I got there the evening of the day it closed down.

Q. In other words, you arrived in camp just before this so-called Union meeting?

A. That is right.

Q. You were not yet employed by Mr. Robinson? A. No.

Mr. Walker: Objected to. Just a moment.

Mr. Potts: I want to state it correctly. [729]

Q. (Mr. Potts) Were you employed by Mr. Robinson at that time? A. No.

Q. Had you gone to the camp seeking employment or did you have an arrangement for employment before you went there?

(Testimony of Earl Davis.)

A. I had an arrangement to take out more posts, similar to what I did the year before.

Q. To take out more posts? A. Yes.

Q. Now, when you took out these posts, was it in 1937 or 1938?

A. I started in the Fall of 1937 and worked on through until 1938.

Q. You worked on that job practically a year?

A. I worked on that job practically a year.

Q. They were cedar posts, were they?

A. Yes.

Q. Were they fence posts? A. Yes, sir.

Q. Making posts is not particularly a part of logging operations, is it?

Mr. Walker: Wait. I object to that as calling for a conclusion.

Trial Examiner Hektoen: Are you thoroughly familiar with timber work in all its branches? [730]

The Witness: I think so.

Trial Examiner Hektoen: I think he may answer.

(Thereupon the last question was read.)

A. No, it would not be classed as a logging operation.

Q. (Mr. Potts) That is what I mean, in the ordinary logging operation, they do not make cedar posts as part of the logging of timber?

A. No.

(Testimony of Earl Davis.)

Q. This was a special job you had up there, or arrangement? A. Yes. [731]

Q. Did the visit that you made to the Long Lake Lumber Company's office in Spokane, about which you have testified, occur in connection with the cedar pole transaction or have anything to do with it? In other words, your transactions in connection with the cedar posts caused you to go to the Long Lake Logging Company's office on any business matters, or do you get what I am trying to get at?

A. Yes, I know; I am not sure whether it was in regard to posts or what.

Q. Were you or weren't you indebted to the Long Lake Lumber Company for those posts during the year 1939? A. Yes. [733]

Q. That is what I was drawing your attention to, whether or not you had occasion to call at the office in connection with that transaction.

A. I have been there several times on that.

Redirect Examination

Q. (Mr. Walker): Were you also indebted to the Long Lake Lumber Company for a truck?

A. Yes, I trucked myself there; that is for Dave Brown instead of the company.

Q. That was the truck you used for the purpose of hauling cedar posts? A. Yes.

Q. During all the time you worked in cedar you were receiving all your checks from Mr. Robinson, weren't you?

A. Well, I was paid; while I was up here, I did.

(Testimony of Earl Davis.)

Q. The areas where you did the cedar work were the same areas where the white pine logging had been done, is that correct?

A. Yes; but in some of the areas there was no white pine.

Q. Some of the cedar posts you made you sold as an individual enterprise, is that correct?

A. Yes.

Q. And those you didn't sell yourself, what did you do with them?

A. I yarded them at Samuels. [734]

Q. And were the posts which were yarded at Samuels ultimately delivered at Spokane?

A. Part of them.

Q. To the Long Lake Lumber Company?

A. Part of them and part of them I took right on out and sold.

Q. Those you did not sell, those were delivered to the Long Lake Lumber Company in Spokane, is that correct?

A. Yes. They shipped some of them; they loaded some of them out here. [735]

ARDEN DAVIS,

recalled as a witness by and on behalf of the Board, having been previously sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Hektoen: You were sworn the other day?

The Witness: Yes.

Q. (Mr. Walker): Mr. Davis, referring to all of the individuals listed on Board's Exhibit No. 6, will you describe the type of work done by Mr. Jack Bopp?

A. He helped in the office; he was my assistant.

Q. Are there any other clerical or office employees other than yourself and Mr. Bopp?

A. No.

Q. Are all the other individuals who are listed on what is marked Board's Exhibit No. 6 engaged in either production or maintenance work?

A. Yes.

Q. They are? A. Yes. [751]

Mr. Walker: That is all. May we have a recess?

Trial Examiner Hektoen: For how long?

Mr. Walker: Until my witness arrives. I have sent for him.

Trial Examiner Hektoen: All right. We will take a ten-minute recess and after that until he comes.

(Thereupon at this time a twenty-minute recess was taken, after which proceedings were resumed as follows:)

CECIL CHANEY,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Walker): What is your name?

A. Cecil Chaney.

Q. Where do you reside?

A. Osburn, Idaho.

Q. Osburn, Idaho? A. Yes.

Q. Prior to that where had you lived?

A. I lived in Sandpoint or Dover.

Q. What is your occupation?

A. Timberman.

Q. Have you ever worked at what is commonly known as the Caribou Basin? A. Yes. [752]

Q. When did you first begin working there?

A. In 1938.

Q. How long during that season did you work there?

A. I worked up there all summer.

Q. What kind of work did you do that season?

A. Gypoed, skidding and loading.

Q. Following the 1938 season, did you again ever at any time work at Caribou? A. Yes.

(Testimony of Cecil Chaney.)

Q. When did you next work there?

A. I don't know just how long I did—I don't know just when I did start.

Q. Was it in 1939?

A. Yes; in the spring of 1939.

Q. What type of work did you do at that time?

A. In 1939? Gypoed, skidded and loaded as we did before.

Q. Who do you mean by "we"?

A. There were four of us in there together; father, Cecil Runyon and Harry Gonsalus.

Q. Do you remember the incident of the camp closing down? A. Yes.

Q. Did you work there that day?

A. Worked until noon.

Q. Then what did you do?

A. We went home. [753]

Q. Before going home did you do anything? Let me put it this way: When you say you went home, do you mean you returned to Sandpoint?

A. Yes, sir; I went to Sandpoint when we left and nobody else worked so we did not either.

Q. Between the time you quit work and you had left the camp, what did you do during that period?

A. Well, we just went up to the camp to find out how long we were going to be closed down.

Q. Did you see anyone at camp?

A. Yes, we saw Mr. Robinson.

Q. Did you have any talk with him at the time?

A. Yes.

Q. Will you relate what was said?

(Testimony of Cecil Chaney.)

A. He said it was pretty rainy and he would have to close down for awhile until further notice and would let us know when to come back again.

Q. Whose horses were you using at the time?

A. My father's; I was buying one team myself but I didn't get very far with it.

Q. You were staying, were you, during the time you were working in Caribou?

A. At the trailer house, the four of us.

Q. At this time in the camp was there any discussion with Mr. Robinson about this trailer house?

[754]

A. No, I don't think there was.

Q. What did you do with your trailer house?

A. We left it up there with the intention of going back to work again.

Q. How did you happen to leave the trailer house up there?

A. We figured we were going back to work soon and we didn't want to take it home and then back again.

Q. Subsequent to this time did you sign a card in Local 119?

A. I don't just understand that; right at that time?

Q. No, not at that time.

Trial Examiner Hektoen: After that time.

Mr. Walker: After that time.

A. After that date?

Q. Yes. The day upon which the camp closed down, did you then sign a card in the Local?

A. No, it was after the camp had closed.

(Testimony of Cecil Chaney.)

Q. Did you have any discussion with Mr. Robinson about the Union?

A. Yes, yes, we had at different times talked about it.

Q. Can you recall what was said?

A. No, I could not say just as to what was said.

Q. During the period between when you left camp or when you had ceased to work and the time when you arrived in Sandpoint on that day, did you have any discussion with Mr. Brown, Jr.?

A. Yes, we took him—we gathered up our loading outfit and [755] rigging and we were locking it up in the trailer house and we took the jammer at that time.

Q. What was said at that time?

A. Jim said he didn't think it would be very long before we were starting back to work again and I asked him if he thought we should take the outfit home or leave it there, that if we were going to work again we better leave it out there. He said, "That is what I would do if I were you, leave it out there for awhile and see how things turn out."

Q. During the period the camp was closed down did you at any time go up the road toward the camp?

A. When the camp was closed down?

Q. Yes.

A. Well, I don't know as we ever went to the camp, no.

Trial Examiner Hektoen: Did you go up the road toward the camp?

(Testimony of Cecil Chaney.)

The Witness: Yes, we went up to get our horses.

Q. (Mr. Walker): Did you take the horses to camp?

A. No, we turned them loose up there at that time; we were through; and they got out and we went up and got them on the Pack River road and put them into pasture; Frank's pasture.

Q. Do you know Warren Ratt? A. Yes.

Q. Do you know Allen Asher? A. Yes.

[756]

Q. Do you know Hugh Thurlow? A. Yes.

Q. Were you ever on this road toward camp at any time when these last three individuals were also there? A. Yes, I was.

Q. Did you see anyone else other than those three individuals?

A. Yes, there were lots—practically the whole camp was there.

Q. Did you see Mr. Robinson there?

A. Yes; he came down.

Q. Who was with you on that day?

A. My father and Cecil Runyon, and I would not say whether Gonsalus was there or not, he was helping us, whether he was along with us that day I don't remember.

Q. Your father's name is Fred Chaney?

A. Yes.

Q. Have you any brothers? A. Yes, two.

Q. What are their names?

A. Arlie Chaney and Rollo Chaney.

(Testimony of Cecil Chaney.)

Q. Were either of your brothers with you?

A. Yes, sir; Arlie was with me, he was up there, he had the truck.

Q. What occurred at this time on the road?

[757]

A. Well, Mr. Ratt came up there and wanted to know what was all the trouble about and said he understood there was violence up there and he came up to straighten it out and said, "I see there is not any; why don't you fellows go along to work?" And there was a picket line across the bridge and we asked him if he thought it was showing good judgment to go across the picket line. And he said, "If you want to go to work there, go ahead." And we told him we wanted to work but we didn't want to go through there and he said, "I don't believe you want to work, or you would go on and go to work."

Q. Did Mr. Ratt talk with Mr. Robinson at any time during that period?

A. He was there, I would not say; I didn't really notice them talking together or not.

Q. Did Mr. Ratt address some other inquiries of the men with you other than that about you men not wanting to work?

A. To the truck drivers, he did; he asked them what was holding them up and they told him they didn't want to go through the picket line and Mr. Ratt told them the same as he did us. And he said he would see the road was clear and we could

(Testimony of Cecil Chaney.)

go to work if we wanted to; but I guess nobody wanted to go through the picket line.

Q. Did Mr. Ratt inquire of the group with you and the truckers anything further than what you have said? A. No, not that I can remember.

[758]

Q. What was Mr. Robinson doing at this time?

A. He was there, I didn't see he was talking to anybody.

Q. Did Mr. Robinson voice any remarks generally?

A. Well, I don't—there is a lot of that I don't remember; I don't remember much about it now, I don't remember.

Q. At any time when Mr. Ratt was there did he ask the group and the truckers to indicate in any manner whether or not they desired to go to work other than by voicing the statement?

A. No, I could not answer that either.

Q. Did Mr. Robinson talk to your brother at any time during that period?

A. Yes, he talked to my brother up there that day.

Q. What did Mr. Robinson say to your brothers?

A. He asked them if they wanted to go and haul logs. *He* said, "Yes." And he said, "Follow me and we will go up and get some logs."

Q. After Mr. Robinson said that did he do anything? A. No.

Q. Did he have his crew there?

A. Yes, he had his crew there.

(Testimony of Cecil Chaney.)

Q. What did he do with the crew?

A. After they got through talking, after he got through talking with the truck drivers he went up toward the camp for a few minutes and came back again.

Q. When he came back did he say anything to your brother? [759]

A. He told him if he wanted to haul logs "come on, if you don't; he would have to get another crew of truck drivers."

Q. What did your brother say about that?

A. He said "You will have to go ahead and get them because I won't cross the line."

Q. What did Mr. Robinson do then?

A. He left.

Q. He what?

A. He left there where we were.

Q. Did you return again after that?

A. No, I don't believe he did. Mr. Ratt, Mr. Thurlow and Mr. Asher, they all left then when they saw there was nothing they could do.

Q. Did you know a Mr. Herbert Johnson?

A. No.

Q. Did you know a Leon Wise? A. Yes.

Q. Did you see him there that day?

A. Yes.

Q. Where did you see him?

A. He was across the Caribou bridge.

Q. On which side of the bridge?

A. On the side next to the camp.

(Testimony of Cecil Chaney.)

Q. That would be west?

A. That would be west. [760]

Q. Or east?

A. It would be southwest—or south.

Q. Would it be on the side furthest removed from Sandpoint? A. Yes.

Q. Did you see him on the bridge at any time?

A. Yes, I did.

Q. Was anyone with him?

A. Yes, Mr. Johnson; I don't know his first name.

Q. Was anyone else besides Mr. Johnson and Mr. Wise there?

A. At the time I remember there was just the two of them.

Q. Did they talk with Mr. Robinson at any time?

A. Yes, they came over there and talked to him.

Q. How did they happen to come over there, do you know?

A. Well, I went over there, and figured if they intended to open the camp again.

Q. Did they talk with Mr. Robinson?

A. A little; not very much.

Q. Did you hear what was said?

A. No, I didn't.

Q. Did they talk with Mr. Ratt? A. Yes.

Q. What did they say and what did he say?

A. Well, Mr. Ratt asked Mr. Johnson what he wanted and he said they wanted the Long Lake Lumber Company to recognize the Union. [761]

(Testimony of Cecil Chaney.)

Q. Where was Mr. Robinson at this time?

A. He was along there someplace; I don't know exactly where.

Q. After Mr. Johnson said that, what else was said?

A. Well, I don't know if there was anything much said after that.

Trial Examiner Hektoen: What we want to do is to get the conversation as far as possible. It may not seem important to you, you may not attach importance to it at all, so if you can remember anything, tell it; and if you cannot remember anything, say so. However, just do the best you can.

The Witness: That is what I am doing.

Q. (Trial Examiner Hektoen): Do you remember anything else about it at all?

A. The only thing is that Mr. Johnson asked Frank if he would recognize the Union and he said, "No."

Mr. Walker: Let us go back to this day when the camp shut down, Mr. Chaney. Is there a fork in the road near where your camp is situated?

The Witness: Yes, about a half a mile below, I would say.

Q. (Mr. Walker): On that day when the camp closed down did you have a talk with Mr. Robinson near the forks of the road?

A. No, I don't remember as we did.

Q. Did you see Mr. Robinson first at the main camp or down at your camp? [762]

(Testimony of Cecil Chaney.)

A. Down at our camp.

Q. He came down there?

A. He came down there.

Q. Did you talk with him at the time?

A. Yes, sir.

Q. What was said at the time?

A. Mr. Runyon did the talking most of the time there; I was in the trailer house until along about the last; and when I went out he said he would just as well take the outfit and take them home.

Q. Did you hear what Mr. Runyon said?

A. No, I didn't, at the first, I don't know what he said.

Q. Your camp is situated near the road, is it?

A. Yes; right there.

Q. And on that morning did you see any cars traveling on the road?

A. Yes; there were lots of them went down.

Q. Going down? A. Going down.

Q. About what time of day was it when you saw them?

A. It was in the morning; I don't know what time in the morning, sometime.

Q. Was that an unusual occurrence?

A. Yes, sir; they generally go the other way if anything.

Q. Did you see the cars going down? [763]

A. Yes, sir.

Q. Did it cause any wonder in your mind?

A. Yes, sir; we did wonder what it was all about.

Q. Did you learn? A. Yes.

(Testimony of Cecil Chaney.)

Q. Who did you learn that from?

A. When Frank came down he told us the camp was shut down.

Q. Whose logging material were you using at the time? A. Father's.

Q. After the talk down at your trailer house did you talk with Mr. Robinson again that day?

A. Not as I remember; I don't think we did.

Q. Did you go up there—did you gather up your rigging? A. Yes.

Q. After gathering it up, what did you do with it? A. We put it in the trailer house.

Q. After you put it in the trailer house, what did you do? A. We came to Sandpoint.

Q. Before coming to Sandpoint did you go to the main camp?

A. I don't remember whether we went up there that day or not.

Q. When did you have a talk with Mr. Brown, Jr.?

A. When we gathering up the rigging, about 300 yards below the trailer house.

Q. Between this date when the camp closed down and the day [764] Mr. Ratt came up to the Caribou road, was there a period in there when you and your father did go up to the camp?

A. Yes, sir; we went up to the camp.

Q. On that day did you see Mr. Robinson?

A. Yes, sir; we did.

Q. Was there any conversation with him on that day?

(Testimony of Cecil Chaney.)

A. Well, we asked him how long it was going to be before we went back to work and he said he didn't know, when he got ready to go back to work he would let us know.

Q. Was your brother Arlie a member of the local at that time on this particular day?

A. Yes.

Q. Did you have any discussion with Mr. Robinson about your brother? A. In what way?

Q. About whether or not your brother had signed a card in the local?

A. Well, I know my brother asked Frank if he should join and he said that was all right to join the Union and he said, "You use your own judgment on that."

Q. Anything else? A. No, I think not.

Q. You mean there was nothing more said or there was nothing more that you recall was said?

A. I don't remember whether there was anything more or not. [765]

Q. After you have stated what you have, have you exhausted your memory of what was said during that period? A. Just about.

Q. All right. Was there any talk with Mr. Robinson as to whether or not—whether or not he had had any prior experience with the Union?

A. Yes, sir; I heard him say something, I don't know what he said. He said he busted one Union and would bust this one too. [766]

JAMES M. BROWN, SR.,

previously sworn, was recalled and further testified on behalf of the Board as follows: [786]

Q. Can you give the total log scale for the year 1939?

A. The total log scale, in round numbers, is 37,000,000.

Q. And will you state how that is broken down, and, particularly, as to the Caribou Basin?

A. This is very close,—it is a figure I didn't have, and didn't know until this morning; but out of that we cut 7,900,000 from Robinson, and the only difference would be in the amount we would receive down there,—that would be the difference in the two inventories, which would be almost infinitesimal. So you can use that as a basis, safely.

Q. Mr. Brown, can you give the value of the log scale for the year 1939? A. Value?

Q. Yes. [789]

A. You told me it was not necessary to get that.

Trial Examiner Hektoen: Well, I think it would be valuable to have it. Have you a rough estimate?

The Witness: I could make a rough estimate by figuring 20 or 30 minutes.

Trial Examiner Hektoen: Well, if you find it convenient to do that, we would like to have the figures.

Mr. Potts: Is that the entire value of the entire log scale?

Mr. Walker: It was on the value and sales that were broken down.

(Testimony of James M. Brown, Sr.)

A. I might have misunderstood you. I asked about both.

Q. (Mr. Walker) I see. What was your total volume of sales for the year 1939 in terms of board feet?

A. Well, I already answered that; it is about fifty million.

Q. Of that total cost, what percentage constitutes the sales from outside of the State of Washington, or made to points outside of the State of Washington?

A. Anywhere from 60 to 75 per cent.

Q. Now, of the total value of sales in the year 1939, approximately what percentage would constitute sales outside of the State of Washington?

A. Oh, probably the same, or a shade more; about the same. [790]

May I ask, where do you want the value of those logs?

Q. What do you mean?

A. FOB our mill, Spokane, or FOB shipping point?

Trial Examiner Hektoen: I don't know.

Q. (Mr. Walker) Would there be any difference in the figures?

A. I should say there would; there would be a tremendous difference.

Q. There would be a difference in transportation, you mean?

A. There would be transportation and unloading, yes.

(Testimony of James M. Brown, Sr.)

Q. Well, let us say FOB the mill.

A. FOB the mill?

Q. Is that term used?

A. Yes, that is correct.

Q. Do you recall where you were on Tuesday, June 6, 1939?

A. No, I don't. I spent plenty of time trying to figure it out, myself.

Q. You have a summer home at Hayden Lake?

A. Yes. [792]

Q. Do you recall whether or not you were at the Lake over the weekend preceding June 6, 1939?

A. I am not sure there is where I was; I think I was there, but I am not sure.

Q. Now, do you recall whether or not you engaged in a telephone conversation with Mr. Robinson on Sunday, June 4, 1939? A. No.

Q. Do you recall whether or not you engaged in a telephone conversation with Mr. Robinson on Monday, June 5, 1939?

A. I don't recall; I am not sure.

Q. Now, do you recall whether or not you placed or received a call on the fore part of Tuesday, June 6, 1939, at your Hayden Lake resident?

A. Well, if Mrs. Brown were here,—she is now in California,—I am pretty sure that day I was several miles away from the telephone. I am not positive—one of those days I was there.

Q. Now, on the evening of June 6, 1939, did you engage in a telephone conversation with either your

(Testimony of James M. Brown, Sr.)

son or Mr. Frank Robinson, about 7 o'clock in the evening?

A. I don't recall, but I think that is the day I would have been a long ways from the telephone; and would still have been away until late in the evening.

Q. Well, do you recall whether or not on June 6, 1939, you [793] engaged in a telephone conversation with Mr. Robinson, or your son, at approximately 7:30 that evening? A. What date?

Q. Tuesday, June 6, 1939?

A. I don't recall.

Q. Have you any knowledge of Mr. Robinson executing a chattel mortgage to the Bonner County National Bank on or about March,—during the month of March, 1939?

A. I don't know what date it was, but I know that he executed one.

Q. And did the Long Lake Lumber Company execute to the Bonner National Bank,—Bonner County National Bank, by a separate written instrument, a guarantee of repayment of the principal sum? A. You mean for the mortgage?

Q. Yes. A. No.

Q. Did you have any negotiations with Mr. Von-Canon at the time the mortgage was under discussion? A. Prior to the mortgage?

Q. Yes. A. No.

Q. After the mortgage was executed?

A. No.

Q. Or did your brother, Mr. Dave Brown? [794]

(Testimony of James M. Brown, Sr.)

A. No. I don't know whether he saw Mr. VonCanon.

Trial Examiner Hektoen: Who is Mr. VonCanon?

The Witness: Mr. VonCanon is the gentleman that I was trying to get to play bridge with. We play bridge every time we get together.

Trial Examiner Hektoen: I take it he is an officer of the bank, or he acts like it?

The Witness: Yes, he acts like it.

Q. (Mr. Walker, continuing) Did the Long Lake Lumber Company make any arrangements with the Bonner County National Bank relative to that chattel mortgage? A. No, sir.

Q. No,—did I understand that,—

A. I never saw it, even.

Q. Did I understand that the Bonner County National Bank had no discussion with any of the officers of the Long Lake Lumber Company relative to that chattel mortgage?

A. They had no discussion with me.

Q. And the Bonner County National Bank had not required the Long Lake Lumber Company to execute to it any type of instrument? A. No.

Q. Nor a letter? A. No.

Q. There is not in existence any financial obligation running [795] from the Long Lake Lumber Company to the Bonner County National Bank pertaining to that particular mortgage?

A. So far as I know, no.

Q. Would any other officer know?

(Testimony of James M. Brown, Sr.)

A. I doubt it; I don't see how they would.

Mr. Walker: That is all.

The Witness: I would like to ask about this value of these logs. We are going to go into some figures that no one in this court room will understand, including myself, when we get through with it.

Trial Examiner Hektoen: What I would like to have is just simply a vague idea of what your gross sales were in the year 1939.

The Witness: But there is so much difference in the gross value of the logs,—between the gross value of the logs and,—

Mr. Walker: (Interposing) I think the matter of sales has been adequately set out in the record.

Trial Examiner Hektoen: Oh, yes.

The Witness: Let me explain here; here would be the logs that cost us \$8 in Spokane in one job, and then there would be logs that cost us \$28 delivered at another job. It just doesn't make sense.

Mr. Walker: Should we go off the record?

Trial Examiner Hektoen: Off the record. [796]

(There was a discussion off the record.)

Trial Examiner Hektoen: Is that all, Mr. Walker?

Mr. Walker: Yes.

Mr. Potts: No cross examination.

(Witness excused.)

Mr. Walker: I offer in evidence what has been marked for identification as Board's exhibit No. 4.

Mr. Potts: No objection.

Trial Examiner Hektoen: If there is no objection, it will be admitted.

(Thereupon the document heretofore marked Board's exhibit 4 for identification was received in evidence.)

BOARD'S EXHIBIT No. 4

Sandpoint, Idaho

June 27, 1939

Mr. E. J. Eagen

844 Dexter Horton Bldg.

Seattle, Washington

Re: Charge No. XIX-C-538

Dear Mr. Eagen:

We have had several conferences concerning the above mentioned charge with your Mr. A. C. Roll, Mr. F. D. Robinson and men who are in his employ and everything seems to be harmonious. Mr. Roll requested that I write a letter to you stating one or two facts. This I am glad to do. Mr. Roll's report to you will show that our camp shut down on the 5th of June, due to the fact that owing to excessive and continuous rains we were no longer able to operate in the mountains with our trucks. The rains have apparently let up and we hope to be able to resume operations in our camp on the 5th of July. It is my intention to resume work on July 5th if possible.

It is my intention to employ the men making up my old crew except in those cases where no employment is available in a few particular lines of work. For example: Prior to closing on June 5th,

we were through making cedar. However, so far as cedar makers are concerned whenever we have an opportunity to place the cedar makers in other jobs, we will do so.

At the present time, we do not know how many of the men have affiliated with the Union and therefore we have not recognized any particular group as an exclusive bargaining agency for our employees. However, after work is resumed, it is our intention to recognize that Union which shows conclusively that it has within its membership a majority of our employees.

Yours very truly,
F. D. ROBINSON.

Mr. Walker: I believe Mr. Brown has some figures for us.

Trial Examiner Hektoen: All right.

JAMES M. BROWN, SR.,

previously sworn, was recalled by and on behalf of the Board, and further testified as follows:

Direct Examination

Q. (Mr. Walker) Mr. Brown, have you some figures for us?

A. I have taken five minutes, and I have done some figuring; this is exactly what I would do if I had gone to my office. The total value of logs is around \$600,000. [797]

Trial Examiner Hektoen: That is, during 1939?

(Testimony of James M. Brown, Sr.)

The Witness: Yes, during 1939.

Mr. Walker: That is all.

(Witness excused.) [798]

JAMES M. BROWN, SR.,

previously sworn, was called as a witness by and on behalf of the respondent Long Lake Lumber Company, and testified as follows:

Direct Examination

Q. (Mr. Potts) Your name is James M. Brown?

A. Yes.

Q. You have been previously sworn?

A. Yes.

Q. You represent the respondent Lumber Company? A. Yes.

Q. You have been called as a witness previously on behalf of the Board? A. Yes.

Q. You are the president of the Long Lake Lumber Company? A. Yes.

Q. How long have you held such an office with the Long Lake [800] Lumber Company?

A. Since its organization; 21 years.

Q. Is the Long Lake Lumber Company a corporation? A. Yes.

Q. In what state is it incorporated?

A. State of Washington.

Q. And did you cause it to be organized?

A. Yes.

(Testimony of James M. Brown, Sr.)

Q. Is the Long Lake Lumber Company qualified to do business in the State of Idaho as a foreign corporation? A. Yes.

Q. What is the business of the Long Lake Lumber Company? A. Producing lumber.

Q. That is to say, the manufacture and distribution of lumber? A. Yes, sir.

Q. Where does it manufacture its lumber products?

A. It has two mills in Spokane, one on the SI Railroad and one on the Great Northern Railroad.

Q. Is one of those mills the sawmill that has been heretofore referred to as the Hedlund Plant?

A. Yes.

Q. To supply those sawmills with logs for the manufacture of lumber, where does the Long Lake Lumber Company obtain its saw logs? [801]

A. On all five railroads out of Spokane.

Q. Are some of the sources of supply of logs in the State of Idaho? A. Yes.

Q. And principally in what counties in Idaho?

A. In Bonner and Boundary Counties.

Q. Is Caribou Basin, that has been referred to here, one of the sources of supply of saw logs for the Long Lake Lumber Company?

A. Yes, sir.

Q. And what other timber holdings does the Long Lake Lumber Company have, either timber owned in fee or owned as standing timber, or purchased under small stumpage contracts in the vi-

(Testimony of James M. Brown, Sr.)

cinity and general locality of the Caribou Basin timber?

A. Well, we have timber that we own in fee, and also other contract timber. Do you want the amounts?

Q. Can you refer to them generally as to certain holdings?

A. The Humbird-Caribou Basin timber; the Menasha Woodenware timber in the Pack River Basin, and the Humbird in the Pack River Basin.

(Thereupon a map was marked as Respondents' exhibit 1 for identification.)

Q. (Mr. Potts) Mr. Brown, you are familiar with this map which I hand you, which has been marked as respondents' exhibit 1 for identification, are you not? [802] A. Yes.

Q. By whom was that map prepared?

A. Mr. Breen.

Q. And who is Mr. Breen?

A. He is our woods superintendent.

Q. Are you personally familiar with the locations and legal subdivisions and general character of the timber holdings which are shown on this map?

A. Yes, I am.

Q. Have you examined the map carefully, yourself, prior to this time? A. Yes.

Q. Is it a true and correct representation of the locality? A. Yes.

Q. And of the location of the various timber holdings to which you have just testified?

(Testimony of James M. Brown, Sr.)

A. Yes. I left out one timber holding. I should have mentioned the Winton-Long Lake timber holding, which is owned in fee.

Q. The Winton-Long Lake timber holdings owned in fee, are owned how as between the Long Lake Lumber Company and the Winton Lumber Company?

A. One-half is owned by the Long Lake Lumber Company, and one-half by the Winton Lumber Company; we own the land and all.

Mr. Potts: We offer this map in evidence, which has been marked as Respondents' exhibit 1 for identification, for the [803] purpose of illustrating the testimony of this witness and other witnesses to follow.

Mr. Walker: May I ask a single question?

Mr. Potts: Surely.

Mr. Walker: Mr. Brown, on respondent's exhibit No. 1, does it distinguish between what is generally referred to as the Humbird-Caribou and what is the Menasha Woodenware?

The Witness: I don't know about the Menasha Woodenware, but the Humbird-Caribou.

Mr. Walker: That is what I want to know. Each separate holding is colored differently?

The Witness: I know the Humbird-Caribou is here; I think there (indicating).

Q. (Mr. Potts) Look at it now (hands map to witness).

A. Yes, they are all in different colors; each holding is in a different color.

(Testimony of James M. Brown, Sr.)

Trial Examiner Hektoen: Does it have any legend on the map there to identify the various holdings?

The Witness: Yes.

Mr. Walker: I have no objection.

Trial Examiner Hektoen: It will be admitted in evidence, there being no objection.

(Thereupon the document heretofore marked Respondents' exhibit No. 1 for identification was received in evidence.) [804]

Mr. Potts: I think, for further explanation of the map, I wish to keep it before the witness for the moment.

Trial Examiner Hektoen: Surely.

Q. (Mr. Potts) This map bears three legends. To what do they refer, Mr. Brown?

A. To what do they refer?

Q. Generally speaking, to what do they refer?

A. To the different units.

Q. To the different units, or holdings?

A. Yes.

Q. Of timber? A. Of timber.

Q. Take the first, the Humbird-Caribou,—strike that. Take the Humbird-Caribou — Caribou-Hell Roaring Unit. What is that legend? How is it shown on the map? How is it described?

A. That is the Caribou Basin-Hell Roaring Unit (indicating).

Q. What is the nature of the legend?

A. It is green.

Q. Green stripes?

(Testimony of James M. Brown, Sr.)

A. Green stripes, yes.

Q. And the legend which refers to and is noted on the map as Winton-Long Lake Lumber Company holding, what type of legend is that?

A. That is orange, isn't it?

Q. Well, I would call it red.

A. Well, red or orange. [805]

Q. It appears to be a very light red, does it not?

A. Yes.

Q. And the legend referring to the Humbird-Long Lake Lumber Company holding is what type of legend?

A. In blue.

Q. Blue stripes?

A. Blue stripes.

Q. And the Long Lake Lumber Company holding is in what type of legend?

A. It is yellow.

Q. Now, so far as the holdings which I have referred to are concerned,—are those the only timber holdings of the Long Lake Lumber Company, or in which the Long Lake Lumber Company is a part owner, or has any interest in, as shown on this map?

A. I think that is all that is shown on this map, yes.

Q. Now, referring to the Humbird-Long Lake holdings, the Caribou-Hell Roaring Unit, you might state whether or not those are the holdings, and whether or not that is the timber in which unit the timber is being logged by the Robinson Logging operation?

A. Yes, it is.

Q. Next, the Winton-Long Lake Lumber Com-

(Testimony of James M. Brown, Sr.)

pany holding, which you have described, as timber owned in fee by the two companies, you might state whether or not that is timber which is in the process of having portions of it logged at the present time? [806] A. Yes.

Q. What is the case as to whether or not arrangements have been made for the logging of a portion of that timber during the present year?

A. Yes.

Q. Has the logging operation commenced as yet, or not? A. Oh, no; it couldn't.

Q. Who is to log that timber this year for the two companies? A. Oliver Brothers.

Q. And then passing on to the Humbird-Long Lake holdings, marked in blue, what is the nature of those holdings?

A. Those holdings were bought on a stumpage basis from the Humbird Lumber Company.

Q. Are those holdings connected in any way with the Caribou Basin Logging operation?

A. No.

Q. Are the Winton-Long Lake Lumber Company holdings connected in any way with the Caribou Basin Logging Operations? A. No.

Q. And the last, the Long Lake Lumber Company holdings, what are they?

A. Just standing timber.

Q. That is owned by the Long Lake Lumber Company? A. Yes.

Q. Is any of that being logged at the present time? [807] A. No.

(Testimony of James M. Brown, Sr.)

Q. Or has it been the last two years?

A. Yes.

Q. Where is that located with reference to any natural stream? A. It is on Pack River.

Q. Now, is there shown on this map the Dam which has been heretofore mentioned as the Colburn Creek Dam? A. Yes.

Trial Examiner Hektoen: Will you point out where the dam is?

The Witness: This is the main highway, 12 miles from Sand Point towards Bonners Ferry here (indicating).

Q. (Mr. Potts) Mr. Brown, several years ago, did the Long Lake Lumber Company make an arrangement with the Humbird Lumber Company for the purchase of the stumpage or standing timber in the Caribou Basin? A. Yes.

Q. About what time was that?

A. I think it was in 1935.

Q. And as a result of the negotiations between the Humbird Lumber Company and the Long Lake Lumber Company, was a purchase contract consummated and entered into? A. Yes.

Q. What was and is the Humbird Lumber Company? [808]

A. It is a company which has headquarters here at Sand Point, Idaho.

Q. And did it own a large quantity of standing timber in the vicinity of Sand Point in northern Idaho?

(Testimony of James M. Brown, Sr.)

A. Yes, many times as much as there is in Caribou.

Q. And did the Humbird Lumber Company cease active lumber operations many years ago?

A. Yes, and liquidated.

Q. With the result that it sold and disposed of some of its stumpage? A. Yes.

Trial Examiner Hektoen: What is the technical definition of "stumpage", for the record.

Mr. Potts: I can answer that, perhaps, or Mr. Brown can answer it.

Trial Examiner Hektoen: Any way that will be simpler.

Mr. Potts: Stumpage is standing timber usually sold on a stumpage basis, or at so many dollars per thousand feet log scale; it is standing timber to be cut into logs, aside from cedar poles, which are not sold that way. Cedar poles are sold at so much per pole.

(Thereupon a document was marked as Respondents' exhibit No. 2 for identification.)

Q. (Mr. Potts) I hand you an instrument which has been marked as Respondents' exhibit No. 2, and I will ask you what it [809] is?

A. Well, I just looked this over for the first time in a long time. I know that is the agreement that we made with Humbird for the purchase of the Caribou-Hell Roaring Unit.

Q. Do you recognize your signature on that contract? A. Yes.

Q. And the signature of T. J. Humbird?

(Testimony of James M. Brown, Sr.)

A. Yes.

Q. President of the Humbird Lumber Company? A. Yes.

Q. And do you recognize the signature of J. M. Brown of the Long Lake Lumber Company?

A. Yes.

Q. That is your signature?

A. That is my signature.

Mr. Potts: We offer in evidence respondents' exhibit No. 2, and since it is an original instrument of some importance and value, I ask permission to substitute a compared copy, and then withdraw the original.

Trial Examiner Hektoen: What is the date of the contract?

Mr. Hunt: June 28, 1935.

Mr. Walker: May I inquire?

Mr. Potts: Certainly.

Mr. Walker: Mr. Brown, is this agreement, marked Respondents' exhibit No. 2, still in existence? [810]

The Witness: Yes.

Mr. Walker: I have no objection.

Trial Examiner Hektoen: It may be admitted, and a copy may be substituted for the original.

(Thereupon the document heretofore marked Respondents' exhibit No. 2 for identification was received in evidence.)

RESPONDENTS' EXHIBIT No. 2

This Agreement, Made and entered into this 28th day of June, 1935, between Humbird Lumber Com-

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

pany, a corporation, party of the first part, and Long Lake Lumber Company, a corporation, party of the second part;

Witnesseth; That in consideration of the payments herein agreed to be made by party of the second part, and the terms and conditions to be performed by party of the second part, party of the first part agrees to sell to party of the second part all of the merchantable timber, consisting of white pine, yellow pine, spruce, cedar, tamarack, hemlock, red fir, and white fir, standing, lying and being upon the following described land in Bonner County, Idaho, to-wit:

Block Number 1:

Section 1;

North Half ($N\frac{1}{2}$) of Section 12;

North Half of the South Half ($N\frac{1}{2}S\frac{1}{2}$) of Section 12;

All in Township 59 North Range 3 West B.M.

South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Sec. 5;

North Half of Section 7;

North Half of the North Half ($N\frac{1}{2}N\frac{1}{2}$) of Section 9;

All in Township 59 North Range 2 West B.M.

Block Number 2:

Sections 13, 24 and 25, in Township 59 North Range 3 West B.M.

South Half ($S\frac{1}{2}$) of Section 7;

South Half ($S\frac{1}{2}$) of Section 8;

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

South Half of the North Half ($S1\frac{1}{2}N1\frac{1}{2}$) of Section 8;

All of Section 9, except North Half of the North Half ($N1\frac{1}{2}N1\frac{1}{2}$);

All of Section 18;

All of Section 17;

All of Section 19;

All of Section 20;

West half of the southwest quarter ($W1\frac{1}{2}SW\frac{1}{4}$) of Section 21;

North Half of the North Half ($N1\frac{1}{2}N1\frac{1}{2}$) of Section 29;

All in Township 59 North Range 2 West B.M.

It Is Understood and Agreed, that party of the second part shall have the right to enter upon the above described land and cut and remove the above described timber at any time after the execution of this Agreement and continue the cutting and removal of such timber so long as it shall not be in default in the performance of any of the terms and conditions of this contract to be performed by it, or in making any payment at the time and in the manner herein specified. It Is Understood and Agreed that all timber suitable for the manufacture of cedar poles of standard sizes and cedar piling shall be cut into poles or piling and other cedar timber suitable for saw logs shall be cut into saw logs.

The party of the first part grants to party of the second part the right to use all improvements of

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

party of the first part now on said land, such as dams, flumes and buildings, and also the right to cut on said land any mixed timber to be used in improvements on said land in connection with the logging operations to be carried on without any charge being made therefor, and also grants to second party, without charge, a right-of-way over any other land of first party necessary to be used by second party in removing the timber covered by this contract.

The white pine timber shall be cut to a six inch (6") top. The saw logs shall be scaled in the woods or on cars as loaded on either the Spokane International Railway or Great Northern Railway, it being understood and agreed that party of the second part shall have the option to load said logs on either of said railways, but party of the first part shall have the option to determine whether said logs shall be scaled in the woods or as loaded on cars. The cedar poles and piling shall be inspected in the woods by a scaler employed by first party, and the wages and the board of such scaler shall be borne equally by the parties to this Agreement. The said scaler shall furnish each party to this Agreement with a weekly report showing all logs scaled and cedar poles and piling inspected during that week and also a report on the fifth of each month showing the total logs scaled of each species and the number and sizes of cedar poles and piling inspected during the preceding month. All logs scaled shall be numbered by

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

marking the number on each log and the scale thereof entered in a scale book opposite the number of such log, the white pine record to be kept separate and logs numbered consecutively, the yellow pine record to be kept separate and a similar record kept thereof, but the other logs may be designated as mixed and scaled together and a similar record kept thereof. Such records shall at all times be subject to inspection by each of the parties.

In case second party shall be dissatisfied with the scale of logs as reported by such scaler and shall so report to first party, then in case the parties do not reach an agreement, second party shall have the right to employ a check scaler regularly employed by the U. S. Forestry Department to check the scale made by the Scaler employed. Such check scaler shall make his scale in accordance with the method and plan usually adopted by the Forestry Service in making a check scale of its own timber. He shall deliver to each of the parties a copy and report of his check scale and in case the report of such check scaler shall show a variation in excess of three per cent (3%) of the scale made by the scaler employed, party of the first part shall, upon request of second party, employ another scaler to replace the scaler employed, and shall also pay the costs of such check scale, otherwise the cost of such scale to be borne by second party.

All logs shall be scaled with a Scribner Decimal C. Rule and shall be scaled and the timber cut in

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

accordance with the rules and regulations of the U. S. Forestry Service in force on contracts governing the sale of U. S. Forestry timber at the present time, provided, however, that party of the second part shall not be required to remove or pay for any white pine log that will not scale at least thirty-three and one-third per cent ($33\frac{1}{3}\%$) or any cedar log that will not scale at least fifty per cent (50%) of its gross scale after deduction for visible indication of defect.

It Is Understood and Agreed, that the party of the second part will cut, manufacture and purchase from first party all of the merchantable saw timber, except hemlock, the cutting of which shall be optional with second party, all timber suitable for cedar poles and piling covered by this contract, and in its logging operations cut and manufacture all of the merchantable saw timber and cedar timber suitable for poles and piling on each section as the work progresses, or the cedar operations on said section shall immediately follow the removal of the white pine on each section. It is understood and agreed that party of the second part will cut into saw logs and pay for all cedar timber suitable for saw logs, produced in manufacturing poles and piling.

Each of the parties to this Agreement agrees to pay one-half of the taxes on the land and timber covered by this contract for the year 1935, and the party of the second part agrees to pay the taxes on

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

the land and timber covered by this contract for the year 1936 and subsequent years until this contract is completed, provided, however, party of the second part may be relieved of the obligation to pay taxes on the land in any section after all timber covered by this contract has been cut and removed and paid for, by notifying party of the first part in writing that he has completed the cutting of the timber on said section and releasing said land from this contract and furnishing party of the first part satisfactory evidence from the State or Government Officials, Code Authority or other authority in charge of brush disposal on said land, that all brush and debris has been disposed of on said area to be released, such notice and release and evidence of brush disposal so given by party of the second part shall release party of the second part from the obligation to pay taxes on the land in such section accruing subsequent to January 1st, following the giving of such notice. The terms taxes as used in this contract shall cover all taxes and assessments of every nature and kind, including fire tax or assessments.

It Is Further Understood and Agreed, that party of the second part shall dispose of all brush and debris accumulated in connection with the logging operations carried on on said land and that all of the work covered by this contract shall be performed by party of the second part in strict conformity with all of the provisions of the Forest Conserva-

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

tion Code and Rules of Forest Practice, as set forth in Conservation Bulletin Number 7 issued by the Western Pine Division of the Lumber Code Authority issued in May, 1934, to become effective June 1st, 1934, and any amendments that may be made thereto, provided, however, that in case said forest Conservation Code and Rules of Forest Practice shall become inoperative by reason of repeal thereof, or for any other reason, then it is understood and agreed that the disposal of brush and debris and the cutting of this timber shall be performed in accordance with the rules and regulations of the United States Forestry Service, or such other Federal, State or Code authority which may be in charge.

In case any of the timber covered by this contract shall be damaged by fire or by wind prior to the time that the same has been cut, then party of the second part agrees to immediately commence operations and cut and manufacture the timber on said burned area or on the area upon which any timber may be camaged by wind in accordance with the terms of this contract, in order to salvage such timber and reduce the loss on account of such fire damage or damage by wind so far as practicable.

It Is Understood and Agreed, that this contract shall not be effective until party of the second part executes and delivers to party of the first part a good and sufficient undertaking in the sum of Fifty Thousand Dollars (\$50,000.00), executed by some surety company to be approved by party of the

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

first part, conditioned for the faithful performance of this contract by party of the second part, or, in lieu of such bond, furnish other deposit or security satisfactory to first party. Second *part* shall have the option to furnish, in lieu of the foregoing, a bond of such a surety company in the amount of Twenty-five Thousand Dollars (\$25,000.00), and, in addition thereto, pay to the first party, in addition to the prices provided in the *1st* of prices hereinafter set forth, additional sums of Fifty cents (50c) per thousand (1,000) on all white pine as cut until such additional payments shall aggregate the sum of Twenty-five Thousand Dollars (\$25,000.00), which additional payments are hereinafter referred to as "lieu bond". Said Lieu bond shall be retained by the first party as a bond under the same terms as the other bond furnished, in lieu of the reduction in the Fifty Thousand Dollar (\$50,000.00) bond as above referred to. Said lieu bond shall apply upon the last stumpage cut under this contract—in other words, the second party shall be entitled to credit in the amount of said lieu bond upon the last stumpage out under this contract. In case such security shall be reduced by the application of any portion thereof in liquidation of any breach of this contract, party of the second part agrees to furnish additional security satisfactory to first party equal to the amount so applied in liquidation so that said security shall at all times be equal to Fifty Thousand Dollars (\$50,000), or the Twenty-five Thousand Dollar (\$25,000) bond, plus

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)
additional payments of Fifty cents (50c) per thousand (1,000) on white pine cut under this contract as shall be due and payable to date as lieu bond, if that option shall have been exercised by the second party.

It Is Understood and Agreed, that this contract shall continue in force for a term not exceeding eight (8) years, but it is understood and agreed that party of the second part shall cut at least 10,000,000 feet of white pine in each year commencing Jan. 1st, 1936 T.J.H., J.M.B., that this contract continues in force, and complete the removal of all timber covered by this contract within eight (8) years from Jan. 1st 1936. T.J.H., J.M.B.
The party of the second part promises and agrees to pay to party of the first part the following prices for the timber covered by this contract:

White Pine saw logs in Block Number 1,	
per thousand feet	\$6.00 ..
White Pine saw logs in Block Number 2,	
per thousand feet.....	7.000
Yellow Pine saw logs, in all Blocks, per thousand feet	2.50
Mixed timber, including spruce, tamarack, hemlock, red fir, white fir and cedar logs, in all Blocks, per thousand feet.....	.50
Cedar poles and Piling, in all Blocks:	
7", 8" and 10"—25'	
6", 7", 8" and 10"—30' and longer sizes	
per lineal foot01½

It Is Understood and Agreed, that said cedar poles shall be inspected by said scaler according to the specifications of the Western Red Cedar As-

(Testimony of James M. Brown, Sr.)

Respondent's Exhibit No. 2—(Continued)

sociation, and the cedar piling shall be inspected according to the specifications of the Great Northern Railway Company.

The payments herein provided for shall be made on the 10th day of each month for all logs and cedar poles and piling scaled or inspected and reported during the preceding month.

It Is Understood and Agreed, that time is of the essence of this contract, and in case of default by party of the second part in making any payment or in the performance of any of the terms and conditions of this contract at the time and in the manner herein specified, party of the first part may, at its option, terminate this contract by giving second party fifteen (15) days' written notice of its intention to terminate this contract.

In Witness Whereof, the parties hereto have executed this Agreement the day and year first above written,

HUMBIRD LUMBER COM-
PANY

By T. J. HUMBIRD

As Its President

LONG LAKE LUMBER
COMPANY

By J. M. BROWN

As Its President

In the Presence of:

OLE PEARSON

J. A. HUMBIRD

(Testimony of James M. Brown, Sr.)

Q. (Mr. Potts) Is this contract with the Humbird Lumber Company, which has just been referred to, the contract under which the timber was purchased which has been logged by Mr. F. D. Robinson, one of the respondents in this matter?

A. Yes.

Q. And has it been in full force and effect since its date, namely, June 28, 1935? A. Yes.

Q. Is it in effect at the present time?

A. Yes.

Q. As President of the Long Lake Lumber Company, is there any particular part of the operation to which, during the past few years, you have devoted your special attention, Mr. Brown?

A. Yes.

Q. What part of the operation is that?

A. To the production of logs.

Q. Is the production of logs for the mills under your particular supervision? [811] A. It is.

Q. And in the exercise of that supervision, have you done anything personally in connection with the acquisition of timber holdings?

A. We never acquire any timber, or any amount of timber, without I first go over it personally and see some of the corners.

Q. And do you conduct negotiations for all purchases?

A. Yes. When I say "all", I mean of any amount.

Q. Of any consequence? A. Yes.

Q. In this instance, did you personally, on be-

(Testimony of James M. Brown, Sr.)

half of the Long Lake Lumber Company, conduct the negotiations for the Caribou Basin timber owned by the Humbird Lumber Company? A. Yes.

Q. And after the negotiations were completed, and the contract had been entered into, what then did you do, or did the Long Lake Lumber Company do, in connection with the opening up of that timber as a logging operation?

A. Well, the first thing that I did was to go over the proposition of a main road into the timber.

Q. Let me ask you, in that connection: what is the first thing that has to be done in opening up a body of virgin timber for a logging operation? What is the first step that you have to take? [812]

A. The first step that we take in opening up a body of timber is to get a road in there.

Q. What is the importance of a road?

A. Because everything depends on it; everything that comes in and goes out has to go over the main road.

Q. Sometimes it has branches? A. Yes.

Q. In any event, you have to have roads to get the logs out? A. Yes.

Q. And did you give any attention to the location of the main roads which would be necessary to open up this body of timber? Did you give it your personal attention?

A. Yes, indeed I did.

Q. Were the ultimate arrangements in connection with that part of the project made by you?

(Testimony of James M. Brown, Sr.)

Were you up there many times in connection with that part of the project?

A. Both before the work was started, and after; the first time I went in on the road,—I was ill at that time,—but we wanted to get started, and they took me in on horseback.

Q. Who else was interested in laying it out, locating it and determining where the main roads would be?

A. Mr. Breen. I had him with me many times; he worked alone at times.

Q. Would it be proper to say that anyone was in charge of [813] laying out the roads?

A. It would, after it was decided where they were to go, but I made the final decision as to where the roads should go.

Q. And in deciding that, did you consult others?

A. Yes.

Q. And have assistance from others?

A. Yes.

Q. Now, did the Long Lake Lumber Company cause to be built the main logging roads to open up this timber? A. Yes.

Q. And did it repay the cost and expense of this building? A. Yes.

Q. Why did the Long Lake Lumber Company do that?

A. For two reasons: one was, it was an expensive operation, and one was that it was necessary to have one main road into this Basin, and one main set of camps.

(Testimony of James M. Brown, Sr.)

Q. What about the length of this proposed operation? A. Over a period of years?

Q. As to it being an extensive operation? Could you estimate, not too closely, but in round numbers, the expense of the building of the main roads into the operation?

A. I don't know, exactly.

Q. Well, will it go into the thousands?

A. Yes, many thousands of dollars. [814]

Q. In building the main road, what was done? First, what was done about clearing the right-of-way; did that have to be done? A. Yes.

Q. Did the Long Lake Lumber Company arrange to have that done? A. Yes, sir.

Q. At its expense? A. Yes.

Q. Was that road built with machinery, bulldozers, and such? A. Yes.

Q. Did the Long Lake Lumber Company arrange for the construction work? A. Yes.

Q. And when was that work started? Do you recall, approximately?

A. Well, it was shortly after the contract was signed; I don't remember what time it was.

Q. In the year 1935? A. Yes.

Q. Over what period did it continue before completion?

A. From that fall, I believe, into the next spring.

Q. In the meantime, were other improvements made of a permanent character?

(Testimony of James M. Brown, Sr.)

A. Yes, and a permanent set of camps was established. [815]

Q. And who caused them to be built?

A. We did.

Q. Who paid for them? A. We did.

Q. Now, at the time that this preliminary work started in this logging operation, did you have any contact with Mr. F. D. Robinson? A. Yes.

Q. Do you know what he was doing at that time?

A. He had a contract for logging on what was termed in this case, or what has been termed in this case, as Section 11, but it covered 11 and a part of other sections.

Q. It is the logging operation which has been referred to as the Section 11 Logging Job?

A. Yes.

Q. And as "Section 11"? A. Yes.

Q. Was Mr. Robinson working on his contract, and on that logging operation on Section 11 in 1935 and 1936? A. Yes.

Q. And was that operation just started, or was it near completion on Section 11?

A. Well, it was nearing completion.

Q. Did you have any arrangement with Mr. Robinson during the years 1935 and 1936 with respect to the construction of the main [816] logging roads and permanent logging camps in the Caribou Basin? A. Yes, we did.

Q. What was your arrangement with him, Mr. Brown?

(Testimony of James M. Brown, Sr.)

A. Well, our arrangement was that he was to build the road and the camps, and we would give him what assistance we could.

Q. And as to the payment for that?

A. And we would pay him for that.

Q. And was that done?

A. That was done.

Q. Who had the right to determine where the roads should be located? A. We did.

Q. Was there any understanding as to that with Mr. Robinson? A. Yes.

Q. Who was to have that say?

A. That we were to have the right to say where it was located, and to have it acceptable to the Humbird Lumber Company.

Q. Why acceptable to the Humbird Lumber Company?

A. Because they were turning over to us a large amount of timber with a small amount of payment down, and naturally they were anxious to have us build the road in the proper place.

Q. And did you select the campsite for the permanent camp buildings, or assist in locating it?

A. Yes. I selected what I thought would be the natural site for the campsite for the entire Basin. This was done prior to [817] the time the road was started, and it developed that is where the camp was put.

Q. In the meantime, while the road construction was in progress in 1935 or 1936, and before the construction of the permanent camps, did you arrange

(Testimony of James M. Brown, Sr.)

for the construction of some temporary camp buildings that have been referred to here as the Morrow Camp?

A. In arranging for them,—I was trying to think of it yesterday; they were small camps, and didn't amount to very much.

Q. Were they supposed to be only temporary camps?

A. Yes, they were supposed to be merely temporary camps.

Q. You mentioned the amount of the timber involved in the Humbird Tract. Was the amount that you mentioned,—was the amount of the White Pine merchantable timber estimated at or about the time, or at or before the time the contract was entered into with the Humbird Lumber Company?

A. It was estimated, yes.

Q. And what was it estimated to be?

A. 80 million feet.

Q. 80 million feet of merchantable timber,—80 million feet? A. Thereabouts.

Q. Well, all estimates are "thereabouts"?

A. Yes. [818]

Q. It was estimated to be 80 million feet of merchantable Idaho White Pine timber?

A. That is right.

Q. And that involved how much money in the purchase price, Mr. Brown?

A. Of the White timber alone?

Q. Yes.

(Testimony of James M. Brown, Sr.)

A. I would have to do some figuring for that. I could tell you about it after figuring.

Q. About one half million dollars, wasn't it?

A. Just about, for the white pine alone.

Q. But since it was to be paid for on a stumpage basis, it might in the end vary a number of thousands of dollars, according to the actual logs cut, scaled and delivered?

A. That is right.

(Thereupon a map was marked Respondents' exhibit No. 3 for identification.)

Q. (Mr. Potts) I hand you a map which has been marked as respondents' exhibit 3 for identification, and I will ask you to state what that represents, generally speaking?

A. That is what we call a progress map of the operation, showing the amount cut each year, and the number of miles of road built.

Q. In the first place, what does it show, as a whole?

A. It shows the Caribou Basin. [819]

Q. It shows the legal subdivisions, sections, and so forth?

A. Of the Caribou-Hell Roaring Unit.

Q. And does this map contain all of the legal subdivisions of timber which are described in the contract between the Humbird Lumber Company and the Long Lake Lumber Company, which has been introduced in evidence here as respondents' exhibit No. 2?

A. Yes.

(Testimony of James M. Brown, Sr.)

Q. And how are those legal subdivisions designated on this map? A. By 40's.

Q. In what way?

A. By a red check-mark.

Q. By a red check-mark?

A. That is right.

Q. And each 40 checked with a red check-mark is included in the lands covered by this contract in the Caribou Basin Logging Tract?

A. Yes.

Mr. Walker: By 40's, or quarter sections.

Q. (Mr. Potts) By 40's?

A. No,—yes, by 40's.

Q. Now, there are portions of the map which are colored in bright colors?

A. That is right. [820]

Q. And what do those colors represent?

A. That represents the area cut in the different years.

Q. This legend in the corner of the map shows what each color represents? A. Yes.

Q. For instance, the color grey is shown to represent the area cut in 1936?

A. That is right.

Q. And that amount or portion of the area marked with the color grey on the map was the area of this timber which was cut in the year 1936?

A. That is right.

Q. And the other colors the same?

A. Yes.

(Testimony of James M. Brown, Sr.)

Q. That is, each color designated in the legend shows the area that was cut in each of the subsequent years? A. Yes.

Q. Was any,—had any timber been cut prior to 1936?

A. None, only for the purpose of roadbuilding. A copy of that is made out each year, and one copy is given to the Humbird Lumber Company, and one for us.

Q. Who made this map? A. Mr. Breen.

Q. Are you familiar with everything that the map represents, personally? [821]

A. Yes, I am.

Q. And is it a fair and accurate representation of all that it purports to show with reference to the Caribou Basin? A. It is correct.

Mr. Potts: We offer in evidence Respondents' exhibit No. 3.

Mr. Walker: No objection.

Trial Examiner Hektoen: It will be admitted, without objection.

(Thereupon the document heretofore marked Respondents' exhibit No. 3 for identification, was received in evidence.)

Q. (Mr. Potts) For the moment, I am confining our attention to the map which has just been received in evidence as respondents' exhibit No. 3.

Now, I want you to point out on that the location of the main road up to the Caribou Canyon to which you have recently testified.

(Testimony of James M. Brown, Sr.)

A. Pack River is in Section 15, down here (indicating).

Q. It is in Section 15?

A. And the elevation is somewhere about 2,250 or 2,300 feet. I was going to check that this morning, but didn't. The main road leads from Section 15 into Section 16, which is a State Section, and it comes up near the west line of 16 and wyes.

[822]

Trial Examiner Hektoen: Are you moving west?

The Witness: Moving west, yes. Then it crosses the line on Section 17 on the south side of Caribou Creek.

Q. (Mr. Potts, continuing) Which line of 17?

A. The east line of Section 17, south of Caribou Creek; and on account of the contour of the ground, runs into Section 20 and then back through just the corner of Section 19 and up into the southwest of the SE $\frac{1}{4}$ of Section 18, where the permanent camps are built. These are at an elevation of about, or around, 3400 feet.

Q. Which direction does Caribou Creek run down there?

A. Caribou Creek runs almost directly east and west.

Q. That runs in an easterly direction?

A. Yes, easterly direction.

Q. And we have been going up the creek, as you have described this road? A. Yes.

(Testimony of James M. Brown, Sr.)

Q. Does or does not the road follow the creek, more or less?

A. Yes, but it is away from it in some places because it is so steep; there is a canyon there.

Q. Let's see. You have taken us past the camps and along in that section (indicating).

A. (Interposing) Section 18. There are permanent camps here (indicating).

Q. Is that where the main road ends? [823]

A. No. The main road, that is, the main road into the camps.

Q. Has it been continued?

A. Yes. As the legend shows, that road is about 3 miles long, or $3\frac{1}{2}$ miles, and the legend shows that there is already built in there over 37 miles of road.

Q. Let us get that clear now. We are discussing the main roads?

A. This is the main road; this road is wide enough so that trucks, on a great part of this road, can pass; two trucks may pass.

Q. When you mentioned 37 miles of road,—

A. (Interposing) That is the logging road.

Q. That is the logging road out of and beyond the main road?

A. Yes, beyond the main road.

Q. Does the main road end at the camp?

A. What we call the main road ends at the camp; the rest is logging road.

Q. The other roads which you referred to are called secondary or side roads?

(Testimony of James M. Brown, Sr.)

A. Logging roads, narrow roads, — logging roads.

Q. Does that include all the roads that the Long Lake Lumber Company built?

A. That includes all the roads into this camp, and this Y into the timber, that is what we call our main road here in there (indicating). [824]

Q. Is that the road that was constructed and paid for at the instance of the Long Lake Lumber Company? A. Yes.

Trial Examiner Hektoen: Your main road extends from the wye to the main camp, is that the point?

The Witness: No, our main road extends from the Pack River to the main camp.

Q. (Mr. Potts) Your main road runs from here (indicating) back in Section 15 and the Y in Section 15 up into the camp?

A. That is right.

Trial Examiner Hektoen: And then from here on into the timber (indicating)?

The Witness: That is right.

Q. (Mr. Potts) Now, is this campsite where the main camp is located, marked on this map so that it can be readily ascertained?

A. Yes.

Q. Or could you improve on it?

A. It is marked plainly. Where it says "barn" and "camp"; there is a group of buildings there,—there are several buildings,—and they are all in one little flat.

(Testimony of James M. Brown, Sr.)

Q. Are you familiar with the several elevations in the different portions of the territory, or are you not? A. Yes, I am.

Q. I am referring to the different portions of the territory or area embraced in the Caribou Basin Logging Project. [825]

A. Yes, I am.

Q. You mentioned the elevation where the road started? A. I said, about.

Q. And the other elevation you mentioned was where the camp is located? A. Yes.

Q. And what is that?

A. 3400 feet, I believe.

Q. That means above mean sea level?

A. Yes.

Q. And these other elevations you have mentioned are above mean sea level?

A. Yes. This lookout above the logging tract here is at 6200 feet, and I think the timber we have at the highest is at an elevation of 5,500 or 5,600 feet. You could check that.

Q. The topography of this country in which the logging operation is conducted,—speaking of the area on this map embraced by the Humbird contract, and covering all this logging operation,—what is it, generally speaking?

A. It is continually upgrade; there is a divide right there.

Q. Where is it?

A. On the end,—Section 13, 24 and 12. The

(Testimony of James M. Brown, Sr.)

Priest River Divide is in there, and our timber runs up as far as this line there (indicating).

Q. Do you know about the height of the Divide? [826]

A. This Lookout is at 6200 feet. I have been to the Lookout, but I have not been above it.

Q. What I am getting at is, from the place where you started your road in Section 15, what is the character of the ground as far as grades and elevations are concerned?

A. Going up to the timberline, it is extremely rough and an extremely expensive road to build.

Q. How are the grades on the roads?

A. I can't tell you exactly; but from a short distance east of the west line of Section 16 to a very short distance east of the west line of Section 17, there is a change in elevation of nearly 1000 feet.

Q. And it rises nearly 1000 feet in that distance? A. Yes.

Q. All right. From the west line of Section 17, or the east line of Section 18, if you prefer, how is that?

A. It is not very bad in there; it is a gradual rise.

Q. Is this a level country?

A. No, it is all hillside.

Q. All hillside? A. Yes.

Q. The roads, do they not, have to run up the grades to reach the timber?

A. Yes, and they are very steep.

(Testimony of James M. Brown, Sr.)

Q. And the logs have to be brought down steep grades? [827]

A. Very steep; they are so steep that some of the trucks can't make the grades.

Q. This Colburn Creek Dam is not shown on the map to which you have just referred, and from which you have been testifying?

A. No.

Q. And it is not in that area? A. No.

Q. About how far is it from the nearest point of the Caribou—how far is it from the Colburn Creek Dam?

A. We always talk from the edge of the timber, which is the west line of Section 17; it is about 10 miles, I guess.

Q. Ten miles from the edge of the timber on the east line of Section 17?

A. Yes. I have not measured it.

Q. That is by road? A. Yes, by road.

Q. Now, referring to the large map, respondents' exhibit No. 1, I believe you have already pointed it out? I think that you have pointed out the location on the map.

A. Yes. Of course, it is both a dam and a storage; it is a dam and a lake which had been created for the purpose of storing and holding the logs.

Q. Would you indicate the road that leads there? Would you indicate the course of the road leading from the Caribou Basin operation to the Colburn Creek Dam? [828]

(Testimony of James M. Brown, Sr.)

A. Do you want me to trace it with a pencil?

Q. Yes, with a pencil, trace it in order that it may be in the record.

Trial Examiner Hektoen: We will have it on the map, rather than by description, then?

Mr. Potts: I was going to do both; both show it on the map with a pencil, and have it in the record by description. After all, it doesn't mean much to have it on the record.

Trial Examiner Hektoen: It might be well if he traced it on the map.

Q. (Mr. Potts): Are you prepared to trace it on the map?

A. I don't think that is my business; I am not a draftsman. It leaves Section 17,—

Q. In what direction?

A. In an easterly direction through Section 17 into 15; and then there is a main highway,—from there down to the main highway, between here and Bonners Ferry, which is about five miles from the foot of the hill, out of Caribou.

Q. That is sufficient for my purpose. Is that the road, over which any logs which might be hauled to and unloaded at the Colburn Creek Dam would be hauled?

A. Yes. These five miles,—all these logs have to come over that road. They have to come out of Pack River, and—

Q. (Interposing): Have any logs heretofore been hauled out of the Caribou operation to the Colburn Creek Dam? [829] A. Yes.

(Testimony of James M. Brown, Sr.)

Q. When? A. Last fall.

Q. Now, going to the Winton-Long Lake holdings shown on this same map, what is the fact as to that? What is the fact as to whether or not any of the logs to be taken from that timber and to be logged during the present year,—are they to be logged and hauled and unloaded at the Colburn Creek Dam?

A. Yes, the parts to be hauled; they can't get out by any other road.

Q. All of it is Long Lake Lumber Company logs? A. Yes.

Q. Which will be half of the logs cut from those holdings? A. Yes.

Q. What is the fact as to whether there are logs to be produced from your other holdings shown on this map?

A. They all must come out on that same road.

Q. Is the Colburn Creek Dam and storage to be used for handling them? A. Yes.

Q. Was the Colburn Creek Dam designed and constructed for the purpose of handling logs from the Caribou Basin alone?

A. No, it was not.

Q. What was it designed and constructed for, and what it is intended to be used for in your operations? [830]

A. It was designed and constructed for, and is intended to be used to take care of nearly all the timber that we cut around this district, and par-

(Testimony of James M. Brown, Sr.)

ticularly all the timber that comes from the Pack River Basin, or the Caribou Basin.

Q. You didn't have that storage until the latter part of last year, did you? A. No.

Q. Not at all?

A. No. We worked on it, and tried to have it.

Q. But you didn't have it? A. No.

Q. Prior to that, did you have any water storage for the delivery of any logs from the Caribou Basin? A. No.

Q. And where have all the logs produced in the Caribou Basin operations since it started in 1936 been delivered and shipped to you?

A. On the Great Northern at Samuels, and on the S&I at Samuels; depending largely on which mill we want the timber——

Q. (Interposing): At any rate, they have been delivered at landings on railroads? A. Yes.

Q. Loaded on cars and shipped to your mills from those landings? A. Yes.

Q. At railroad sidings? A. Yes. [831]

Q. And the difference in the places at which they were landed, and at which they were unloaded and loaded onto cars depended upon which of your Spokane Mills you wanted them shipped to?

A. Not altogether.

Q. Not altogether?

A. Not altogether, but largely.

Q. In other words, is one of your mills in Spokane on one railroad,——

A. (Interposing): Yes, and the other is on the

(Testimony of James M. Brown, Sr.)

other road; one is on one road, and one is on another.

Q. One is on one railroad, and the other is on another?
A. That is right.

Q. You stated that when you opened up the Caribou Basin, you had an arrangement with Mr. F. D. Robinson in connection with the preliminary work and the permanent improvements, such as main logging roads and camps?
A. Yes.

Q. Did you have any arrangement with him with respect to the future conduct of the logging of this timber; or do you catch what I mean? I don't want to get too involved?
A. I think so.

Q. Did you have some understanding with Mr. Robinson that he was to have the logging of that timber?
A. Yes. [832]

Q. And when was it contemplated that he should begin logging that timber, with reference to the logging contract which he was then completing?

A. I think it was about the first of 1936.

Q. Your negotiations and arrangements with Mr. Robinson with respect to the logging, as well as the construction of improvements were verbal, were they not, Mr. Brown?
A. That is correct.

Q. That is, did you have any formal written contract at the inception of that?

A. No, we did not.

Q. And did you, from year to year, or from time to time thereafter, have an informal written contract with Mr. Robinson with respect to his logging operations?
A. Yes, we did.

(Testimony of James M. Brown, Sr.)

Q. Were the logging operations in which Mr. F. D. Robinson was engaged in the month of May and June, 1939, and, in fact, throughout that entire year, being conducted by him under any contract in writing between himself and the Long Lake Lumber Company? A. Yes.

(Thereupon a document was marked as Respondents' exhibit No. 4 for identification.)

Q. (Mr. Potts): I hand you an instrument which has been marked as Respondents' exhibit 4 for identification. Please examine it [833] and state, if you know, what it is (indicating).

A. Yes, I went over this to refresh my memory. This is a contract made in January, 1939.

Q. With whom?

A. With Mr. Robinson and the Long Lake Lumber Company.

Q. And do you know the signatures to that instrument? A. Yes, I do.

Q. And the signature of D. E. Brown, for the Long Lake Lumber Company, whose signature is that?

A. That is my brother's signature.

Q. David E. Brown? A. Yes.

Q. Is he an officer of the Long Lake Lumber Company? A. Yes.

Q. What office does he hold?

A. Secretary-treasurer.

Q. Was he such at that time? A. Yes.

Q. And F. D. Robinson,—— A. Yes.

(Testimony of James M. Brown, Sr.)

Q. Is that the signature of F. D. Robinson?

A. Yes.

Q. Did you have anything to do with this contract before it was actually signed by your brother?

A. Yes, I went over it, and had it roughly written, and was [834] with him when he drew it up.

Q. And is this written instrument under which the 1939 logging operations were being conducted by Mr. Robinson?

A. Yes.

Mr. Potts: We offer in evidence Respondents' exhibit 4 for identification, and request permission to substitute and prepare a copy, since it is an original contract.

Trial Examiner Hektoen: When was the contract dated?

Mr. Potts: January 26, 1939.

Mr. Walker: I have no objection.

Trial Examiner Hektoen: It may be received, and a copy may be substituted for the original.

(Thereupon the document heretofore marked Respondents' exhibit No. 4 for identification was received in evidence.)

(Testimony of James M. Brown, Sr.)

RESPONDENTS' EXHIBIT No. 4

E. C. Wert, Vice President

Manufacturers

Long Lake Lumber Company

Spokane, Washington

J. M. Brown, President

Main Office

348 N. Wall Street

Two Mills

250,000 Ft. Daily Capacity

Millwork Plant

Spokane Pine Products Co.

W. J. Johnson, Mgr.

D. E. Brown, Sec'y-Treas.

Idaho White Pine

Ponderosa Pine

Fir and Larch

Mouldings, Lath

K. D. Window Frames

Unitrim::Pactrim

Cut Stock

Cedar Posts

Mr. F. D. Robinson

January 26, 1939

Sandpoint

Idaho

Dear Sir:

All agreements contingent upon fires, strikes and other conditions beyond our control. Stenographic

(Testimony of James M. Brown, Sr.)

and clerical errors subject to correction. All quotations subject to previous sale and change without notice. All contracts subject to approval by home office.

We are passing credits of \$8098.01 as of December 31, which takes up your operating losses for 1938. After checking with your bookkeeper, Mr. Davis, this leaves you owing us \$24,924.06 according to your books. On our books it will show \$4445.20 less as we have not charged you with the check sent to the Shell Oil Co. until after the first of the year.

In the above amount, we are assuming \$500.00 owing to the Anchor Securities Co., \$498.50 balance owing on shovel and \$2099.51 balance owing on Monarch Cat. Under this settlement, you have been paid for all improvements on Caribou and Pack River in full such as roads, camp buildings (including blacksmith shop), landings, fire trails, and other work already accomplished. This also pays for the decking and prepays the loading on all the logs at the track as of January 1, 1939.

After January 1, 1939, we will pay you for logging out of Caribou and loading on cars on the SI or GN on Idaho White Pine \$8.75 per M, Spruce \$8.00 per M, Cedar \$7.75 per M and \$7.50 per M on Mixed. You are to put in the quantities and specie specified at the time designated by us. These prices contemplate the maintenance and upkeep by

(Testimony of James M. Brown, Sr.)

you of all camps, the extension of roads, of landings and the disposal of brush.

Revision or cancellation of this deal may be made by either party by giving thirty days written notice. You are familiar with the contract which we have with the Humbird Lumber Company and all work must be done to conform with this.

This, we believe is in accordance with our understanding with you and if you agree with us, we will ask you to sign under the work "Accepted" and return the original for our files.

Yours very truly,

LONG LAKE LUMBER
COMPANY,

By D. E. BROWN.

Accepted:

By F. D. ROBINSON.

Precision

Quality

Spokane Pine

Mfd. By

Spokane Pine Products
Co.

Spokane, Wash.

Western Pine

WPA

Association

We Specialize in Mixed-Car Shipments of Lumber,
Mouldings, Frames, Trim, Lath, Cedar Posts

(Testimony of James M. Brown, Sr.)

Q. (Mr. Potts, continuing): Do you recall when you commenced construction of the Colburn Creek Dam? A. Yes.

Q. Do you remember about what season of the year?

A. I imagine it was somewhere around August.

Q. It was in 1939? A. Yes.

Q. In the summer of 1939?

A. Yes, in the summer of 1939.

Q. Now, at that time, did you make any arrangements with F. D. Robinson in connection with the construction of that dam? [835]

A. Yes, I,—

Q. (Interposing): You did make such arrangements? A. Yes.

Q. Prior to making such arrangements, had you completed your design for construction and determined what the Long Lake Lumber Company wanted done? A. Yes.

Q. In the way of constructing a dam?

A. Yes.

Q. What was the purpose of its construction, with reference to creating any physical conditions?

A. With reference to creating a pond large enough to hold a sufficient volume of logs for us.

Q. And what was the reason for that?

A. I don't understand.

Q. Why did you change to this method of having water storage?

A. There were two reasons: in the first place, our largest mill,—both mills are in the city of Spo-

(Testimony of James M. Brown, Sr.)

kane. The largest mill has an artificial pond, and there is not any room for expansion, and we just could not handle the logs fast enough. And the other is that the logs deteriorate when they are left any length of time on skids; and they deteriorate very rapidly in hot weather.

Q. Does the fact that they are in water help to preserve them?

A. Yes, that helps to preserve them a great deal. [S36]

Q. Who, if anyone, on behalf of the Long Lake Lumber Company handled the location and design and other matters in connection with that dam?

A. Well, aside from conferring with everyone whom I had known, or who had built a dam in this country, Mr. Breen.

Q. That is, he was the director in charge, was he?

A. Yes, sir.

(Thereupon a letter was marked as Respondents' Exhibit No. 5 for identification.)

Q. (Mr. Potts, continuing): I hand you a paper which has been marked as Respondents' exhibit 5 for identification. Will you state what that is, if you know?

A. I have not seen this, even, I believe. Let's see,—yes, that is the agreement that we made with Mr. Robinson.

Q. Mr. F. D. Robinson? A. Yes.

Q. In August, 1939? A. Yes.

Q. Being dated August 18, 1939?

(Testimony of James M. Brown, Sr.)

A. That is correct.

Q. Covering the construction of the Colburn Creek Dam? A. Yes.

Q. Is that signature, D. E. Brown, on behalf of the Long Lake Lumber Company?

A. Yes. [837]

Q. That is the signature of David E. Brown, Secretary-Treasurer of the company?

A. Yes.

Q. And do you recognize the signature of F. D. Robinson there? A. Yes.

Q. That is the signature of Mr. F. D. Robinson there? A. Yes.

Q. And you might state whether or not that is the agreement with Mr. Robinson, under which he did do the work? A. Yes.

Q. That is the agreement under which he did do the work in connection with the construction of the Colburn Creek Dam? A. Yes.

Mr. Potts: We offer in evidence Respondents' exhibit No. 5.

Trial Examiner Hektoen: Do you wish to substitute a copy?

Mr. Potts: And I request permission to substitute a copy, which has been prepared.

Mr. Walker: No objection.

Trial Examiner Hektoen: It will be admitted, without objection.

(Thereupon the document heretofore marked Respondents' exhibit 5 for identification was received in evidence.)

(Testimony of James M. Brown, Sr.)

RESPONDENTS' EXHIBIT No. 5

August 18, 1939.

Mr. F. D. Robinson
Sandpoint,
Idaho.

Dear Sir:

Confirming our verbal conversation, you are to furnish all the labor and all the material for the construction of the dam, skidways, etc., on Colburn Creek, as outlined by the plan made up by Mr. Breen.

We are to reimburse you for all the money expended, and allow you a 10% addition for supervision, liability, etc. Where you use your own equipment, a reasonable rental charge may be put against the job.

You understand that it may be necessary to revamp some of the plan as work progresses, and you agree to make these changes as we suggest. Mr. Breen will give you any help or assistance which you ask, but will not take any of the responsibility of the operation of the job.

After the job is completed, and we have settled with you on the above basis, the improvements will belong to the Long Lake Lumber Company.

If this is in exact accordance with your understanding, will you kindly sign under the word "Ac-

(Testimony of James M. Brown, Sr.)

cepted'', returning the original copy to us and retaining the copy for your files.

Yours very truly,

LONG LAKE LUMBER COMPANY,

By: D. E. BROWN.

Accepted:

F. D. Robinson.

Q. (Mr. Potts, continuing): Mr. Brown, did the Long Lake Lumber Company pay the costs of the construction of that dam, or reimburse Mr. Robinson for expenditures made by him thereon? A. Yes.

Q. In accordance with that agreement?

A. Yes.

Q. What is the fact with reference to the use of the equipment on the Dam in construction work?

A. What do you mean?

Q. Did Mr. Robinson use some or all of his equipment in connection with that work?

A. He used some of his equipment, for which we paid him.

Q. And on what basis? That is to say, was it on a rental basis?

A. Yes, on a rental basis.

Q. And has that dam been entirely completed?

A. Yes.

Q. And to whom does it belong?

(Testimony of James M. Brown, Sr.)

A. It belongs to the Long Lake Lumber Company.

Q. Has Mr. F. D. Robinson any interest in it whatsoever? A. None whatsoever.

Mr. Potts: May we have a short recess, Mr. Examiner; about ten minutes?

Trial Examiner Hektoen: How much do you want?

Mr. Potts: I would say about ten minutes.

Trial Examiner Hektoen: All right, we will be in recess until five minutes to three by this clock.

[S39]

(Thereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Hektoen: The hearing will be in order. Go ahead, Mr. Potts.

In your description of the roads you mentioned, their steepness, and so forth, are you sufficiently advised to tell us in a general way about the grades of the different roads? It would be a little more illustrative if you could.

The Witness: I want to make a correction, if I may.

Trial Examiner Hektoen: Certainly.

The Witness: I started to state that this road was begun in,—I stated that it started from Pack River in Section 15; it should have been Section 14.

Q. (Mr. Potts, continuing) And where you said Section 15, it should have been Section 14?

(Testimony of James M. Brown, Sr.)

A. Yes.

Q. That is, it is east of Section 15, as shown on the map, respondents' exhibit No. 3, which map does not show Section 14? Is that what you mean, Mr. Brown? That is what you mean, is it not?

A. Yes; it does not show.

Q. Now, what about the grades on the roads? Are you in a position to state?

A. I know something about them, but I don't know exactly. I could tell you approximately. [840]

Q. Well, approximately?

A. The average grade on the main road coming out of the Caribou Creek Bridge, to a short distance east of the east line of Section 17, it would average about, somewhere between 7 and 8 per cent., I believe.

Q. All right. What about the grades?

A. That is what I was telling you.

Q. From then on?

A. From then on, into camp?

Q. Yes.

A. I imagine it would be somewhere around,—well, it goes up and down, and it is pretty hard to tell. The grade go up and down, so you would not have an average; but it would probably be a 7 per cent. grade, taking all the grades as an average; and after you get away from the main road in any direction, excepting down to the Creek,—away from the camp and away from the main roads,—then they run up to,—they are extremely steep. I wouldn't

(Testimony of James M. Brown, Sr.)

venture to guess, but I would say that they are extremely steep.

I wouldn't venture to guess, as I say, but there are roads where you have to go in low gear with a car.

Q. When they are dry or when they are muddy?

A. Both times.

Q. If they are muddy, can you make it in low gear? A. No, indeed not. [841]

Q. Mr. Brown, I call your attention to a sentence in the contract between the Long Lake Lumber Company and F. D. Robinson, dated January 26, 1939, covering the Caribou Basin Logging operations, being respondents' exhibit No. 4, reading:

"You are familiar with the contract which we have with the Humbird Lumber Company, and all work must be done to conform with it."

To what contract did that provision or sentence in your contract with Mr. Robinson refer?

A. To the purchase contract of the timber in the Caribou-Hell Roaring Basin.

Q. In other words, to the contract of June 28, 1935 between the Humbird Lumber Company and the Long Lake Lumber Company, in evidence as respondents' exhibit No. 2? A. Yes.

Q. That is the contract referred to by that sentence in your contract with Robinson?

A. Yes.

Q. Now, to what work was reference made in that sentence, in providing that all of the work must be done to conform with that contract?

(Testimony of James M. Brown, Sr.)

A. All work in the process of logging the timber in a workman-like manner in the Caribou Basin.

Q. Now, when you refer to logging in a workman-like manner, what does that include, specifically? What does that mean? [842] Beginning with it, start right at the stump, at the sawing of the trees,——

Mr. Walker: May I interrupt?

Mr. Potts: Certainly. [843]

Trial Examiner Hektoen: All right.

Mr. Potts: At least, I will undertake to do it.

Trial Examiner Hektoen: All right.

Q. (Mr. Potts) After entering into your logging contract for the logging of this timber with Mr. Robinson, I wish that you would state generally just what each party to the contract did in the operation with respect to the logging of that timber? Take Robinson first; what did Robinson do?

A. He did the logging.

Q. Yes, I know. In doing the logging, just what part of the operation was under his direction and control?

A. The mechanical work of taking the tree from the stump to the time that it was loaded onto the car.

Q. From the stump, which starts with what?

A. Sawing the tree down.

Q. And the process of swamping and skidding, sawing the logs,——

A. The most important part to start with, is to saw the logs at the proper place, and in such a way

(Testimony of James M. Brown, Sr.)

that the greatest number of logs can be gotten out of the timber.

Q. Is it necessary for the sawyers first to saw it close to the ground? A. Yes.

Q. So that stumps of unusual length would not be left above the ground? A. Yes. [849]

Q. That is, sawing the stumps at the proper height, and then the next question comes to the sawing of the logs into proper lengths?

A. Yes.

Q. Without the unnecessary overrun?

A. Yes.

Q. You say that Mr. Robinson handled the logs from the stump to the car? A. Yes.

Q. Did you or the Long Lake Lumber Company have any direction or control of that operation?

Mr. Walker: I will object to that as calling for a conclusion of the witness; that is one of the matters that is in issue.

Trial Examiner Hektoen: The witness may state what was done.

Q. (Mr. Potts, continuing) Well, I will have to reach that ultimately in some way, because that is the test.

Now, with reference to the sawing of the trees, that is the sawing or the skidding or the cutting of the logs, or the hauling or the loading; who handled that? A. Mr. Robinson.

Q. Did the Long Lake Lumber Company have anything to do with that?

Mr. Walker: Just a moment. Same objection. It

(Testimony of James M. Brown, Sr.)

calls for a conclusion of the witness, and a conclusion of law. [850]

Mr. Potts: I think that is a statement of fact, whether he had anything to do with it or not.

Mr. Walker: Then I object on the ground that it is too indefinite.

Trial Examiner Hektoen: Can you make that a little bit more definite? Let us take one thing at a time.

Break that up, if you will.

Q. (Mr. Potts, continuing) Did the Long Lake Lumber Company direct the sawyers in the sawing of the trees? A. No.

Q. Did it employ them? A. No.

Q. Did it direct the swampers, or did it direct the sawyers in the sawing of the trees into saw logs after they were down? A. No.

Q. Did it employ them? A. No.

Q. Did it direct the skidders in the skidding of the logs to the roads or the landings?

A. No.

Q. Did it employ the skidders? A. No.

Q. Did it direct the truckmen in the loading of the logs on their trucks, if they loaded them, or the trucking of the logs from the woods to the landings?

[851]

A. No.

Q. Did it employ them? A. No.

Q. Did it direct the loaders at the landings, at the railroad sidings, as to the loading of the logs onto the railroad cars? A. No.

(Testimony of James M. Brown, Sr.)

Q. Or did it employ them? A. No.

Q. Who did the directing of those men, and who did employ them? A. Mr. Robinson.

Q. Who fixed their wages, salaries, or compensation? A. Mr. Robinson.

Q. Did the Long Lake Lumber Company direct Mr. Robinson as to who he should employ on any of those operations that I have just defined,—as to who he should employ, or as to when he should employ them, or how long he should employ them or keep them in employment? A. No.

Q. Did the Long Lake Lumber Company know the individuals whom Mr. Robinson employed; that is to say, did its officers know who were going to be employed by him? A. No.

Q. Now, in this logging operation in the Caribou Basin, was a cookhouse maintained for providing meals for the employes working [852] there?

A. Yes.

Q. Who conducted that cookhouse? That is to say, was it done by the Long Lake Lumber Company or Mr. Robinson? A. Mr. Robinson.

Q. Did the Long Lake Lumber Company have anything to do with the cookhouse?

A. Nothing whatever.

Q. Who employed the cook and the bullecook?

A. Mr. Robinson.

Q. Mr. Robinson did? A. Yes.

Q. Who paid them?

A. He paid them, I hope.

(Testimony of James M. Brown, Sr.)

Q. Did the Long Lake Lumber Company employ any of them? A. No.

Q. Did it fix their salaries? A. No.

Q. Was a blacksmith maintained in connection with that operation? Was there a blacksmith shop there? A. Yes.

Q. By whom was that maintained?

A. Mr. Robinson.

Q. Did the Long Lake Company employ the blacksmith? A. No. [853]

Q. Did it pay the blacksmith's salary or wages?

A. No.

Q. Or did it direct Mr. Robinson whom he was to employ as blacksmith? A. No.

Q. In an operation of that size, was it necessary to have considerable logging equipment on hand?

A. Yes.

Q. Do you know, from year to year, in a general way, the kind and type of logging equipment which Mr. Robinson uses there? A. Yes.

Q. Were you up there from time to time during the logging season, Mr. Brown? A. Yes.

Q. And did you look over the operations generally, occasionally?

A. Yes, the same as all operations.

Q. The same as all operations,——

Trial Examiner Hektoen: You did look over the operations occasionally, generally, didn't you?

The Witness: Yes, with reference to any camp wherever we got logs, I always did that.

Q. (Mr. Potts) Now, did the Long Lake Lum-

(Testimony of James M. Brown, Sr.)

ber Company during the years involved in this operation, from 1936 to 1939, inclu- [854] sive, have any logging equipment on that operation?

A. No, we not only had no logging equipment on that operation, but neither did we own any logging equipment any place.

Q. In other words, the Long Lake Lumber Company didn't have any logging equipment?

A. We don't have any camp equipment any place of any kind whatsoever; we have not, for years.

Q. Well, while we are still at that point, I want to direct your attention to two loading jammers located somewhere,—I think it was at the Samuels Siding? A. Yes.

Q. On which railroad were they located?

A. There are three jammers; two were located on one, and one on the other.

Q. Did the Long Lake Lumber Company purchase those two loading jammers from the Humbird Lumber Company at some time? A. Yes.

Q. And were they implements or equipment that was used in the woods, or were they used only at the landing?

A. They could be used only on the railroads, at the landing.

Q. What were they used for?

A. For loading logs on cars.

Q. That is, when the trucks would come in with the logs, either taking logs directly from the truck and loading the logs onto the cars, or loading from the landing. [855]

(Testimony of James M. Brown, Sr.)

Q. None are loaded directly,—unloaded directly from the trucks? A. I don't think so.

Q. These loading jammers were for the purpose of lifting the logs from the skidders, lifting them onto the cars? A. Yes.

Q. What are the facts with reference to the use of those two loading jammers after the Long Lake Lumber Company acquired them from the Humbird Lumber Company? What were they used for?

A. For loading logs on cars.

Q. More specifically, what logs?

A. They were used for loading all the logs that were purchased for us, or that were purchased in this territory.

Q. In other words, they were not used for loading logs exclusively that came from the Caribou Basin? A. No.

Q. Did you enter into some arrangements with Mr. Robinson for using those loading jammers, for the loading of your logs acquired from all sources but delivered at those sidings? A. Yes.

Q. Did Mr. Robinson use those jammers, pursuant to that arrangement? A. Yes.

Q. Did the use for loading all the rest of the Long Lake [856] Lumber Company,—change that, please. Did he use them for loading all the rest of the Long Lake Lumber Company logs as well as the logs which he produced and delivered there himself? A. Yes.

Q. And did that arrangement entail some meth-

(Testimony of James M. Brown, Sr.)

od of compensating him for loading other logs, by permitting him to use the jammers for loading his own logs? A. Yes.

Q. Now, as to the payment for that use, you said that you entered into an arrangement?

A. Yes.

Q. Turning to the equipment for a moment, which was used by Mr. Robinson, in his logging operation: generally speaking, was that rather extensive, or of small consequence in amount?

A. Well, there was a good many thousands of dollars involved.

Q. I think that you have testified that the Long Lake Lumber Company did not own any of it?

A. No.

Q. At any time? A. At any time.

Q. Did the Long Lake Company assist Mr. Robinson in the financing of the purchases of some of the power equipment? A. Yes.

Q. And did it assist its other logging contractors with whom it had deals in the purchase of such equipment? Did it do the [857] same for other logging contractors with whom it had dealings?

Mr. Walker: I will object to that on the ground that it is incompetent, irrelevant and immaterial.

Trial Examiner Hektoen: He may answer.

A. Yes, a great many of them.

Q. (Mr. Potts, continuing) Now, we will come back to where we made one start; just what did the Long Lake Lumber Company do in connection with this operation in connection with enforcing

(Testimony of James M. Brown, Sr.)

compliance with the agreement which the Long Lake Lumber Company had with the Humbird Lumber Company, to see that the contract was complied with? In the first place, who scaled the logs that were purchased from them?

A. The Humbird Lumber Company.

Q. The Humbird Lumber Company scaled those logs?

A. Yes.

Q. Where?

A. At the landing; at the track.

Q. And the scalers who did the scaling were employed by the Humbird Lumber Company?

A. That is correct.

Q. They were employes of the Humbird Lumber Company?

A. They were employes of the Humbird Lumber Company.

Q. Now, that scale made at the landings at the railroad tracks was a basis for what? What was that used for?

A. We paid the Humbird Lumber Company on the scale that was [858] made at the landings, and we also paid Mr. Robinson for logging of the same scale.

Q. In other words, the three of you accepted that scale as the basis for settlement on your respective contracts?

A. Yes.

Q. Now, did the Humbird Lumber Company have any other employes working in connection with that logging operation?

(Testimony of James M. Brown, Sr.)

A. What was the question?

(Thereupon the pending question was read aloud as above recorded.)

Q. (Mr. Potts, continuing) Did the Humbird Lumber Company have any other employes working in connection with that logging operation?

A. Yes.

Q. In the woods? A. Yes.

Q. For what purpose? What did they do?

A. They checked to see that the timber was cut and handled according to the contract.

Q. To what extent were they present on the job during the course of the operation?

A. Of course, I don't know; I was not there, but I know that they were there plenty to see that everything was done properly, and to see that they kept after it. [859]

Q. Do you know whether the Humbird Lumber Company had a scaler in the woods checking up?

A. Yes, an inspector.

Q. And inspector? A. Yes.

Q. What would he do in connection with the operations in the way of inspecting?

A. Well, he went over the ground continuously to see that the job was done in a workmanlike manner; I think that he spent the greater portion of his time between that job and another job of a similar nature with the Diamond Match Company.

Q. In doing that, what would he do with reference to specific things?

(Testimony of James M. Brown, Sr.)

A. What do you mean?

Q. For instance, the logs which had been cut? Would he measure them?

A. Yes, he measured the length; he measured the stumps, and watched the skidding to see that the new growth was not disturbed, and so on.

Q. You are required by the terms of the Humbird contract to provide for brush disposal and for all slash created in the logging of that timber?

A. Yes.

Q. What, if anything, did the Humbird Lumber Company do on the ground, with reference to that?

A. They demanded that it be disposed in accordance with the laws [860] of the State and under the terms of their contract.

Q. What did the Long Lake Lumber Company do with respect to seeing that that was done?

A. We insisted that it be done.

Q. What did you do with reference to it?

A. We put a man in there to watch it.

Q. And in the case of the slash having been created by anyone other than Robinson; for instance, the cedar slash that has been testified to here, created by Earl Davis? Did the Long Lake Lumber arrange to have that disposed of?

A. Yes.

Q. Mr. Brown, did you or the Long Lake Lumber Company have any of its employes do any work in connection with this operation in order to determine that the Humbird Lumber Company contract was being complied with?

(Testimony of James M. Brown, Sr.)

A. Yes, we had them investigating it frequently, just as Humbird did; many times, we had them go with Mr. Humbird's man to discuss the situation.

Q. Now, during the year 1938 and the year 1939, who did most of that work? A. My son.

Q. Your son, James Brown, Jr.? A. Yes.

Q. Who employed him to do that work which he did on that job?

A. The Long Lake Lumber Company. [861]

Q. And, individually, did you employ him?

A. Yes.

Q. Who gave him his instructions as to what he was to do? A. I did.

Q. And what did you instruct him to do on that job?

A. I instructed him and all of those men who worked on that job, to watch it continuously and most rigidly, to see that Mr. Robinson would conform with the Humbird contract, particularly, and at all times I advised them that it was Mr. Robinson's job, and not ours.

Q. Did you instruct James Brown, Jr. or any other employee of the Long Lake Lumber Company to direct Mr. Robinson in the conduct of his logging operations on that job? A. No, sir.

Q. Did any employee of the Long Lake Lumber Company have authority to direct Mr. Robinson in the conduct of his logging operations?

A. Positively not.

Q. Did you at any time direct Mr. Robinson in the conduct of his logging operations?

(Testimony of James M. Brown, Sr.)

A. No, I did not. I think I was only in there four times in 1939; I was busy.

Q. Was one of those occasions when you were in there in 1939 on or about the 17th day of August, with your brother, David Brown? [862]

A. Well, I was in there with Dave, but I can't check the date.

Q. Were you there with Dave Brown more than once in 1939? A. No, just once.

Q. Do you know whether or not that is the first time Dave Brown was ever in there?

A. No, he has been there before; he had been there before. I don't know whether he has been there every year or not; I don't remember.

Q. In his employment and connection with the Long Lake Lumber Company, did he have anything to do whatever with the logging operations?

A. No.

Q. That is outside of the office? A. No.

Q. In the office, did he have some supervision over the books and records?

A. Oh, yes; in the office, he did.

Q. How did it happen that he went up there on this particular occasion in 1939, when the two of you were there together?

A. He drove me up there, because he was coming up to look over some machinery in the Humbird shops; I think we drove on up. We drove on up after that.

Q. Did you come on any other business?

(Testimony of James M. Brown, Sr.)

A. I did, myself; I would have no way of coming up if he didn't come. [863]

Q. For what purpose?

A. It was one of my regular trips.

Q. And did this trip have anything to do with any controversy between Mr. Robinson and any labor union, or any of his employes? A. No.

Mr. Walker: I will object to that as calling for a conclusion of the witness and a conclusion of law, and move that the answer be stricken.

Trial Examiner Hektoen: It certainly calls for a conclusion.

Mr. Potts: It is a matter of the state of mind of which only the witness can testify to.

Trial Examiner Hektoen: That is true. The objection is sustained.

Q. (Mr. Potts): Well, the camp was running at that time, was it not, Mr. Brown? A. Yes.

Q. And did you spend much time around there?

A. Very little.

Q. And did you discuss with Mr. Robinson or anyone else on that trip any matters in connection with any controversy that he had with any of his employes, or any labor union? A. No.

Q. On another occasion, sometime before, the date of which I have forgotten at the moment, were you up in the woods somewhere or at the camp discussing the matter of constructing [864] a jammer that would stand up and work 8 hours without breaking down? Do you recall that testimony?

A. Yes.

(Testimony of James M. Brown, Sr.)

Q. Do you recall any such conversation?

A. I don't recall it. It might have happened, but I don't recall it.

Q. You say that it might have happened? Were you interested in logging equipment?

A. I am interested in the equipment of every logger who produces logs for us, that he may get the most efficiency out of the machinery, or the most efficient kind of machinery for the purpose of keeping his costs down, in order that we may learn to keep our costs down.

Q. How does that affect you?

A. It might affect us a great deal, in the cost of our logs.

Q. Were you very much interested in the cost of jammers? A. Indeed, I was, very much.

Q. Do you know where you were on Monday, June 5, 1939? A. No, I don't.

Q. Or on Tuesday, June 6th, 1939?

A. No, I don't.

Q. Or on Wednesday, June 7, 1939?

A. No, I don't; I am not positive.

Q. Did you on any of those days, or at any other time, instruct Mr. Robinson to close down that logging camp? [865]

A. Indeed, I did not.

Q. Or did you authorize or direct your son, James Brown, Jr. to instruct Mr. Robinson to close down that camp? A. I did not.

Q. Did James Brown, Jr. have any authority——

A. (Interposing): None whatever.

(Testimony of James M. Brown, Sr.)

Q. (Continuing): —to tell Mr. Robinson to close down that camp? A. None whatsoever.

Q. Did he, during the fall of 1938 have any such authority? A. No.

Q. Or at any other time? A. No.

Q. How long had Mr. F. D. Robinson been contracting with the Long Lake Lumber Company as a logging contractor prior to this Caribou Basin job?

A. Prior to the Caribou Basin job?

Q. Yes.

A. Oh, I would say about ten years.

Q. What is the fact as to whether or not Mr. Robinson was customarily engaged in the business of a logging contractor?

A. Yes, he has been.

Q. For how many years?

A. For more than 20 years that I know of, because he was logging before the Long Lake Lumber Company was organized. [866]

Q. And do you of your own knowledge know of some other logging operations that he conducted before?

A. When he was contracting for us?

Q. Contracting for others?

Mr. Walker: Just a moment. I think that we are getting pretty far afield, for which reason I object on the ground that such testimony would be incompetent, irrelevant and immaterial.

Mr. Potts: I am inclined to think that it is material, although perhaps it is not essential.

(Testimony of James M. Brown, Sr.)

Trial Examiner Hektoen: Of course, if he has been logging for 20 years, I take it your question has been answered.

Mr. Potts: It really is in connection with an allegation in the pleadings that I don't think is very material myself. I think that is all.

Trial Examiner Hektoen: Do you have any questions, Mr. Hunt?

Mr. Hunt: No.

Trial Examiner Hektoen: We will be in recess until 4:00 o'clock. We have a little over one hour.

(Thereupon, at this time there was a recess taken until 4:00 p. m. at which time proceedings were resumed as follows:)

Mr. Potts: Before cross examination commences, Mr. Examiner, another line of inquiry has been suggested to me by associate counsel, and may I proceed with that? [867]

Trial Examiner Hektoen: Surely.

Q. (Mr. Potts, continuing): Mr. Brown, I want to ask you about the nature of the logging operations in the Caribou Basin with reference to seasons.

For instance, during what season of the year is the operation conducted?

A. Well, the hauling is a very short season. Two years ago, I think it was, there were only 81 days of hauling, according to Mr. Robinson's records.

Q. By "hauling", you mean the trucking of logs from the woods to the landings? A. Yes.

(Testimony of James M. Brown, Sr.)

Q. What affects the hauling season or the trucking season more than anything else?

A. The wet weather; it is at quite an elevation.

Q. Now, speaking of the operation as a whole, is it feasible or practicable or customary to attempt to operate it throughout the year? A. No.

Q. Why not?

A. Because there are times when a man can walk directly over the buildings on snowshoes.

Q. Those are weather conditions?

A. Yes.

Q. Especially deep snows in the winter? [868]

A. Yes.

Q. Do you have in mind when it is usual to start opening up the camps in the spring, from your observations and investigations?

A. Well, from a cost standpoint and a practical standpoint, it is much better not to open up at all, except for cutting poles which must of necessity be cut in the spring over the ground that has been previously logged,—it is not practical to open up until later. The camp should not be opened up until late in the spring, much later on.

Q. Which part of the spring?

A. It is muddy there in the latter part of May or the early part of June; and we don't consider opening up before that.

Q. How late in the fall can the logging be accomplished, or the trucking be done?

A. Depending entirely upon the weather. That depends on how the lateral roads from the main

(Testimony of James M. Brown, Sr.)

roads are, whether trucks can go back with the logs.

Q. Usually, what time in the fall is there a close-down?

A. From a practical standpoint, since Mr. Robinson has been contracting there, I would say from October 10 to October 15 as the earliest part, and up to November 15.

Q. The difference depending upon the fall weather? A. On the weather, yes.

Q. Is it what is known as a seasonal operation? [869]

A. It is a seasonal operation, definitely.

Mr. Potts: That is all.

Cross Examination

Q. (Mr. Walker) Mr. Brown, was that two years ago when there were only 81 trucking days?

A. One of the years he was in there; I don't know which one it was; I think it was two years ago; I am not sure.

Q. Can you state how many days of falling, bucking, skidding and decking in the woods were conducted?

A. That depends entirely upon the number of trucking days.

Q. The falling and bucking depends upon the number of trucking days? A. Yes.

Q. That is the situation in every season?

A. Yes.

Q. Was it your testimony that you did not instruct Mr. Robinson to close down the camp at any time in the month of June, 1939?

(Testimony of James M. Brown, Sr.)

A. No, sir; I would certainly consult my attorney before I would ask him to close down.

Q. And did you have a conversation with Mr. Robinson relative to his camp being organized?

A. What time was that?

Q. Prior to June 7, 1939?

A. No, sir; I did not. [870]

Q. You are certain of that?

A. I am certain of that.

Q. You are certain that on the trip up there with your brother David in August of 1939, you did not discuss any matter pertaining to a labor union at that time? A. With whom?

Q. Mr. Robinson.

A. I am sure,—I am not sure that I even saw Mr. Robinson that day. I remember Dave and I going up to the woods together, but I am not sure that we saw him. I don't remember seeing him that day.

Q. On that day, when your brother and yourself went up to look at the machinery at Humbird?

A. I didn't go to look up the machinery, or to look at the machinery at Humbird.

Q. On the day when you went up with your brother, when he looked at the machinery at the Humbird, did you see Mr. Robinson on that day?

A. I don't remember.

Q. I believe that you stated that you don't recall whether you were up there on Monday, June 5?

Let me change that: you stated that you didn't recall where you were on Monday, June 5?

(Testimony of James M. Brown, Sr.)

A. No.

Q. Do you recall where you were on Sunday, June 4? [871]

A. I am not sure, but I think I was fishing on Hayden Lake.

Q. Do you or do you not recall where you were on Tuesday, June 6?

A. No, I don't, but I think that I was fishing on Hayden Lake and didn't get back until very late that night; I had motor trouble. That is the one I told you about, that if my wife were here, she could help you.

Q. Are you a member of the City Club in Spokane? A. Yes.

Q. Do you recall what you did when you returned to Spokane on Tuesday, June 6th?

A. No, I don't.

Q. Refreshing your recollection, do you recall to whom you talked that evening? Let me put it this way: about what time did you get in Spokane that evening? A. What evening?

Q. Tuesday, June 6th.

A. I don't remember where I was.

Q. You remember that you were at Hayden Lake?

A. No, I didn't say that; I said I thought I might be there.

Q. Does it refresh your memory that you had a telephone conversation from your Hayden Lake home with Mr. Robinson in the fore part of the day of Tuesday, June 6, 1939?

(Testimony of James M. Brown, Sr.)

A. No, I don't think that I did.

Q. What was Mr. Robinson's telephone number in June of 1939? [872] Do you know?

A. His telephone number here?

Q. Yes. A. No, I don't.

Q. During the month of June, 1939, you had a telephone installed in your residence, did you?

A. Where?

Q. In Spokane? A. Yes.

Q. And that number is what?

A. Riverside 2434.

Q. Now, do you recall having a telephone conversation,—strike that. Do you recall placing a telephone call from Riverside 2434 at Spokane to 18-F-11 at Sand Point, Idaho, at 6:52 p.m. Tuesday, June 6, 1939?

A. No. I checked all those things over, trying to refresh my memory, myself.

Q. Do you recall placing a telephone call from your residence in Spokane, Washington, to Mr. Frank Robinson, person-to-person, in Sand Point, Idaho, at 7:18 p.m.? That is, on June 6, 1939?

A. No, I don't; but one of those days, my son Larry was very urgently trying to get Jim. I don't recall what day it was. One of those could have been those calls. He told me that he called Robinson and tried to get Jim.

Q. What is his name? [873] A. Larry.

Q. What are his initials?

A. L. V., I believe.

(Testimony of James M. Brown, Sr.)

Q. Let me try to refresh your memory, once more: after placing the call at 7:18 p.m., do you recall whether you instructed the operator to check the call from the City Club in Spokane, Washington, and change it from a person-to-person call, and that you would talk with anyone listed at 18-F-11?

A. No. That sounds more like Larry.

Q. And that the conversation began at 7:36 and lasted for 6½ minutes?

A. Mr. Walker, I don't believe I ever talked 6½ minutes to any camp in my life, and particularly to Mr. Robinson.

Q. I don't believe that that answers my question. Mr. Reporter, will you read it?

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. I don't remember. I think—I don't think it would, because I instructed everyone not to talk business on that line; I don't believe that he did.

Q. And I think you said you made four calls at the camp during the year 1939?

A. I said I only remember being there four times.

Q. Did you ever confer with Mr. Robinson in your office at Spokane, Washington, at a time during the operating season of [874] 1939,—at any time during the operating season of 1939?

A. Well, if he came to the office, I did,—if I was there, I did.

Q. Do you recall whether or not you conferred with Mr. Robinson on Saturday, July 1, 1939, at your office?

A. No, I wouldn't remember.

(Testimony of James M. Brown, Sr.)

Q. Do you recall Mr. Robinson calling at your office for the purpose of obtaining a \$500 check?

A. Check to whom?

Q. To himself, Mr. Robinson?

A. No, I don't remember.

Q. Where are the cancelled checks kept, Mr. Brown?

A. Which cancelled checks?

Q. Of the Long Lake Lumber Company?

A. I suppose, in the office.

Q. And are they signed only by your brother, or do you countersign them?

A. They are signed either by my brother, my brother-in-law, or myself; any one of us can sign them.

Trial Examiner Hektoen: Who is your brother-in-law?

The Witness: Mr. E. C. Wert.

Q. (Mr. Walker) Did you and your brother have occasion to examine Mr. Robinson's books?

A. No; I never looked at his books, that I know of.

Q. Does your brother? [875] A. No.

Q. Mr. Brown, referring to what has been marked as respondents' exhibit No. 4, is that the settlement sheet at the conclusion of the 1938 season?

A. Yes.

Q. Is it correct that Mr. Robinson received compensation upon the basis of logs fob cars, Samuels Siding?

A. Yes, unless we advance him on work in the woods.

(Testimony of James M. Brown, Sr.)

Q. And on the work which is done prior to the time the log is on board the car, is that work which must be done by Mr. Robinson, is that correct? A. Sir?

Trial Examiner Hektoen: Will you read the question, please?

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. If it comes under his contract, that is correct.

Q. (Mr. Walker) And all work that he does until the log is brought on board the car must be done by him in conformity with the requirements set out or referred to in your Humbird contract, which is marked as Respondents' exhibit No. 2?

A. That is supposed to be true.

Q. You stated that the Long Lake Lumber Company did not employ the blacksmith or did not direct Mr. Robinson who to employ as blacksmith?

A. I never heard of it. [876]

Q. Has the Long Lake Lumber Company ever had occasion to obtain blacksmith's material or equipment for the blacksmith shop upon the request of the blacksmith?

A. In any camp which is logging for us, if they ask us to obtain material, and it came through the proper channels, with a proper requisition, we would probably get it for them. I would not know about that at all. I never bought any material for anybody.

Q. Do you know a Larry Doyle, the blacksmith at Caribou? A. Larry Doyle?

(Testimony of James M. Brown, Sr.)

Q. Yes.

A. No; I might know his face if I saw him. I could perhaps remember his face.

Q. That would be in 1939?

A. I might remember his face. It would be either the 1937 or 1938 season, I now understand, when Mr. Doyle worked there?

A. No.

Q. Do you know Mr. Everett Mackey?

A. That name is familiar to me.

Q. Did he at any time produce any logs in Caribou Basin?

A. Well, I don't know that.

Q. He logged from the side where Mr. Morrow had his camp located, prior to the time Mr. Morrow located in that area?

A. I don't know Mr. Morrow, and I didn't know Mr. Morrow had a camp until I heard of it in the courtroom here. I don't know [877] what was termed the Morrow Camp; that is not familiar to me.

Trial Examiner Hektoen: In other words, your answer is "no"?

The Witness: Yes.

Q. (Mr. Walker) Do you know Ira Cave?

A. No.

Q. Now, does it refresh your memory that Mr. Ira Cave and Mr. Everett Mackey entered into an agreement with a Mr. Breen for the logging of that area which has been referred to as the temporary campsite?

A. My heavens, no. I couldn't do it; I wouldn't know enough about it.

Q. Nor that Mr. Mackey nor Mr. Cave were paid

(Testimony of James M. Brown, Sr.)

by the checks issued from the Long Lake Lumber Company? A. Well, I wouldn't know.

Q. Nor that Mr. Mackey and Mr. Cave had their arrangements terminated by yourself, cancelling their arrangement, in their presence?

A. What were they doing?

Q. Logging?

A. No, that couldn't be; if it were possible, it would only be through Robinson. I don't remember it at all.

Q. Do you know whether or not Mr. Robinson had ever built a dam comparable to the Colburn Creek Dam prior to the time that he constructed that?

A. Mr. Walker, I consulted with many dam builders, and many [878] men, and I decided that Mr. Robinson had the best experience of any man I had conferred with, and that is why I made arrangements for him to build that dam. I would say that I arranged to have him build that dam because I thought that he was the best posted on that kind of work; after discussing that with Harry Brown and H. E. Brown of the H. E. Brown Timber Company, and consulting with other contractors, I decided that Mr. Robinson was the man who should build the dam for that reason.

Q. Had Mr. Robinson ever had experience in building a dam comparable to the Colburn Dam?

A. Yes.

Q. In this territory?

(Testimony of James M. Brown, Sr.)

A. State of Washington; not very far from here.

Q. Had Mr. Robinson completed all logging in Section 11 before the logging began in Caribou?

A. Well, I don't hardly think that he had completed that job over there, yet. In 1936, it seems to me he was running both jobs, but I am not sure.

Q. Had any other log haulers transported their logs over what has been referred to here as the main road other than Mr. Robinson?

A. Other than what?

Q. Other than what has been referred to,—strike that. Other than Mr. Robinson? [879]

A. Yes.

Q. Who?

A. The Winton Lumber Company.

Q. At the Caribou Basin?

A. You are talking about the Caribou?

Q. Yes.

A. Oh, I am talking about the Pack River main road.

Q. Let us get together on this.

A. All right.

Q. The main road which was constructed in 1936 was built leading off of the county road which runs up Pack River? A. That is right.

Q. Now, does anybody truck logs off of the main road which was constructed in 1936,—anybody else?

A. No; not the new road, no.

Q. Have the logs which have been stored in that dam been shipped out of the dam?

(Testimony of James M. Brown, Sr.)

A. No; they are shipping right now; they are loading there every day.

Q. What was the capacity that was stored in that dam in 1939?

A. Well, it is hard to say, because the dam had not had its trial yet; it was not yet filled.

Q. Would you say that the amount would not exceed three millions?

A. I don't think it would; somewhere less than three million.

Q. Prior to the building of the dam, all logs from Caribou [880] were either immediately shipped out, or else they were decked at either one of the Samuels Landings?

A. Yes.

Q. Subsequent to the building of the dam, all logs which were produced in the year 1939, excepting only the logs which were stored in that dam, were shipped out or were decked at either one of the Samuels Landings?

A. When?

Q. In the 1939 season?

A. No. Some of them were shipped in 1940.

Q. I don't follow you on that.

A. Let us have the question again, then.

Mr. Walker: Will you read that question again, please?

(Thereupon the question referred to was read as follows: "Subsequent to the building of the dam, all logs which were produced in the year 1939, excepting only the logs which were stored in that dam, were shipped out or were decked at either one of the Samuels Landings?")

(Testimony of James M. Brown, Sr.)

Q. (Mr. Walker) The ones which were shipped out in 1940 were logs produced in 1939, and were decked at either one of the Samuels Landings?

A. Yes.

Q. Now, all the logs which were produced during the 1939 season were decked at either one of the landings, or shipped out from either one of the landings, except the logs which were [881] stored in the pond?

A. Yes.

Q. And what was done with the logs which were cut from the right-of-way, which has been referred to here as the main road?

A. What was done with them?

Q. Yes.

A. Eventually, they went to the landing.

Q. Was the same thing done with the logs which were cut from either the temporary campsite or the main campsite?

A. I hope so; that is where they should go.

Q. Mr. Brown, this morning I asked you if there was a written arrangement between the Bonner County National Bank and the Long Lake Lumber Company relative to a chattel mortgage of March 21, 1939?

A. Yes.

Q. Was there an oral arrangement?

A. I told you "no"; I said "yes" just now to your question.

Q. Was there an oral arrangement between the Bonner County National Bank and the Long Lake Lumber Company?

(Testimony of James M. Brown, Sr.)

A. No. He has got a better contract than if he had a contract.

Q. The answer is there was no written arrangement?
A. Yes.

Q. There was no oral arrangement?

A. That is right. Mr. VonCanon was in the room here to testify. [882]

Q. Mr. Brown, do you recall that one of the four trips you made to the camp in the year 1939 season was just prior to the time that the camp shut down at the end of the 1939 season?

A. I don't remember; I am quite sure that it was not.

Q. Do you remember the incident of the camp shutting down at the conclusion of the 1939 season?

A. State that question over again. I think that I am getting ahead of myself.

Mr. Walker: Will you read that question, please? Not the last question, but the question before that, if you will.

(Thereupon the question referred to was read as follows:

“Mr. Brown, do you recall that one of the four trips you made to the camp in the year 1939 season was just prior to the time that the camp shut down at the end of the 1939 season?”)

A. It might be; I don't know. It could be.

Q. Do you recall whether or not at that time there was any instruction given from you to Mr. Robinson relative to the shutting down of the camp?

(Testimony of James M. Brown, Sr.)

A. Well, nothing about shutting down the camp, but I remember telling him at one time that the Humbird Lumber Company was raising ned with us because he had too many logs cut ahead. I don't remember just when it was, but it was prior to shutting down.

Q. What do you mean? It was prior to shutting down? [883]

A. Yes. He had too many logs cut and decked in the woods.

Q. Too many logs in the woods?

A. Too many logs cut; too many trees severed.

Q. When you say "decked", do you mean decked in the woods?

A. Too many cut in the woods, ahead.

Q. How could that be, that the cutting would be too far ahead?

A. Well, they probably had too many saws on; it happens frequently in the woods; that has to be controlled according to the trucking. In other words, if he had so many million feet cut and decked in the woods, and he was trucking with good production, and all of a sudden a storm came and shut the trucking down, he would have too many ahead to satisfy the Humbird Lumber Company; that creates a fire hazard the next spring. They were very rigid about that.

Q. I don't quite follow that.

In the first part of the season, what is the first type of workman that goes out?

A. The pole cutters.

(Testimony of James M. Brown, Sr.)

Q. Then what follows?

A. Let us get a particular season; they are all different.

Q. I don't see why they are different.

A. They are all different. They can't be the same.

Q. The logs, before they would be loaded at the landings, they would have to be sawed?

A. Yes. [884]

Q. Wouldn't the first ones going into the woods be the sawyers?

A. No. If we had too many sawed ahead, they would be the last ones out.

Q. How would you go about it the first time that you were going to go in and cut out a stand of timber?

A. I would put the saws out.

Q. The next?

A. I would put the skidders out.

Q. And then who?

A. The trucks, as far as I could.

Q. Then what do you do?

A. Haul the logs out as fast as they are cut, if possible; however, we cannot haul them out as fast as they are cut, but as fast as we can. You can't possibly haul as fast as they are cut.

Q. How does it happen that at the conclusion of the season you would have logs down which have not been trucked?

A. I thought I explained that for you before. Let us get one season. I can explain one season. I

(Testimony of James M. Brown, Sr.)

Redirect Examination

Q. (Mr. Potts) Mr. Brown, did you buy any trucks for Mr. Robinson during the course of his logging operations in Caribou?

A. I never bought a truck for Mr. Robinson in my life.

Q. Did you pay for any trucks purchased by him, so far as you are personally concerned, on behalf of the Long Lake Lumber Company?

A. I never personally paid for them.

Q. There is one thing I want to clear up: I am not quite sure that we all understand it. That is in connection with the question as to all logs produced in the Caribou operation in 1939 being decked or hauled to the landings, or placed at the storage at the Colburn Creek Dam. Were all logs that were actually cut and lying on the ground, or decked in the woods, hauled away from the woods at the end of the 1939 season? A. No.

Q. Then you don't consider them produced until they are further developed?

A. Until the contractor has fulfilled his contract, in this case being Mr. Robinson, having put them on the cars. There were too many there.

Q. Well, in the spring of 1939, do you happen to know how many had been carried over, lying in the woods, or decked on the skidways? [888]

A. I don't remember; there were a number of them, and I know Mr. Pearson could tell me in a minute.

Q. Mr. Pearson?

A. Yes.

(Testimony of James M. Brown, Sr.)

Q. Who is Mr. Pearson?

A. Of the Humbird Lumber Company; I know he was wild about it.

Mr. Potts: That is all.

Recross Examination

Q. (Mr. Walker) What do you mean that you personally had never paid for any truck? That you, as an individual or as an officer of the Long Lake Company had never paid for any truck for Mr. Robison? A. Either one.

Q. Do you know whether or not the Long Lake Lumber Company had ever arranged for the taking of delivery of trucks for Mr. Robinson?

A. You mean for us to take delivery?

Q. Entered into or made financial arrangements whereby it was made possible for Mr. Robinson to take delivery on trucks?

A. No, I don't know; it could happen without me knowing anything about it.

Mr. Walker: That is all.

Redirect Examination

Q. (Mr. Potts) The Long Lake Lumber Company has assisted Mr. [889] Robinson in financing the purchase of some trucks or tractors?

A. We have, tractors; I don't remember the trucks; we have, equipment, yes.

Q. But Mr. Robinson made the purchase?

A. Yes.

Mr. Potts: That is all.

Trial Examiner Hektoen: You are excused. [890]

(Testimony of Frank D. Robinson.)

Q. You said it has been continuous, did you, during the last 15 years? A. Yes.

Q. But your first contract for that company in Bonner County was at Sand Point? A. Yes.

Q. Is that what is generally known as the Section 11 job? A. Yes.

Q. What year was that?

A. About 1933 or 1934; somewheres around there.

[902]

Q. Well, did you leave there in 1935?

A. Yes.

Q. You wound up the job in 1936? A. Yes.

Q. Since 1935 or 1936, where have you been logging? A. Caribou Basin.

Q. That is the Caribou Basin we have been discussing for a week? A. Yes.

Q. What did you first do when you went to Caribou Basin?

A. I put the roads and camps in Caribou Basin.

Q. In speaking of the roads, what roads?

A. The roads from Caribou to,—from Samuels clear to the Canyon on Caribou.

Q. What about the camps? What camps?

A. The temporary camp and the main camp at Caribou Basin.

Q. Speaking of the main camp, what kind of a camp is it?

A. That is a camp for loggers holding about 125 to 150 men.

Q. State whether or not that camp was built to

(Testimony of Frank D. Robinson.)

serve all the loggers who logged the timber in Caribou Basin? A. Yes.

Q. It also served a number of men who logged a part of the Hell Roaring Creek Basin?

A. Yes.

Q. Who owns the road to the camp that you referred to?

A. The Long Lake Lumber Company. [903]

Q. Who built it?

A. The Long Lake Lumber Company.

Q. Who paid for it?

A. I built it, but the Long Lake Lumber Company paid me; they reimbursed me.

Q. The Long Lake Lumber Company paid you for building the road and building the camp?

A. Yes.

Q. Relative to the side roads that cut into the main roads,— A. I did.

Q. Who paid for them? A. I did.

Q. All but the main roads are your obligation to construct for the purpose of getting out the timber surrounding? A. Yes.

Q. Those roads are not permanent, are they?

A. No.

Q. Merely used for the purpose of getting in there to get the timber out? A. Yes.

Q. Were you in the court room yesterday when a contract was identified by Mr. James Brown, Sr. as being the contract between the Long Lake Lumber Company and yourself? A. Yes.

Q. You are familiar with that contract? [904]

(Testimony of Frank D. Robinson.)

A. Yes.

Q. And is that the contract that you have with the Long Lake Lumber Company? A. Yes.

Q. And signed by you? A. Yes.

Q. Now, in pursuance of that contract, have you logged in the Caribou Basin, and were you logging under that contract in the year 1939?

A. Yes.

Q. State briefly what work you do in logging that timber?

A. Well, starting from the stump, I cut it, skid it, load it, truck it, and load it onto the cars.

Q. In other words, the entire operation is your job? A. Yes.

Q. From building the roads, cutting the timber, and hauling it to the landing and placing the timber upon the cars? A. Yes.

Q. Who pays the Unemployment Compensation for your men? A. I do.

Q. Who pays for the Industrial Insurance or the accident insurance for your employes?

A. I do.

Q. Who pays the Social Security Taxes upon these men? A. I do. [905]

Q. Do you have a hospital contract for the protection of your men in the case of illness or injury?

A. Yes.

Q. What hospital serves your men?

A. Dr. Werelius's Hospital.

Q. He practices medicine in Sand Point?

A. Yes.

(Testimony of Frank D. Robinson.)

Q. And he has a hospital that is known as the Community Hospital? A. Yes.

Q. Was it formerly known as the Page Hospital?

A. Yes.

Q. All those bills you pay? A. Yes.

Q. Does the Long Lake Lumber Company pay any of them? A. No.

Q. Now, have you on occasion since you have been in the Caribou Basin done incidental jobs for the Long Lake Lumber Company other than your logging? A. Yes.

Q. I will ask you this: did you construct a dam for them at Colburn? A. Yes.

Q. The dam and flowage was for the purpose of landing logs therein? [906] A. Yes.

Q. In constructing that dam and flowage, did you have occasion to use some of your equipment?

A. Yes.

Q. Were you paid for the use of your machinery?

A. Yes.

Q. By whom?

A. The Long Lake Lumber Company.

Q. Mr. Robinson, in logging, is it customary to take out the White Pine, and the mixed, and the cedar logs, at the same time? A. No.

Q. What is the usual logging practice, so far as getting out cedar logs and cedar piling is concerned?

A. The White Pine, and then your mixed, and then your cedar.

Q. Why do you get the White Pine out first?

A. The cedar would smash up the pine, and would

(Testimony of Frank D. Robinson.)

cause a lot of brush. Therefore, we take the pine first, and then follow with the cedar operation.

Q. I will ask you this: would it make a mess if you took the cedar out first, on account of the branches?

A. Yes, and it would create a fire hazard.

Q. So it is customary to take out the cedar first?

A. Always,——

Q. I beg your pardon. You take out the White Pine first?

A. Yes, the White Pine first.

[907]

Q. In other words, you don't monkey with the cedar until the White Pine has been removed?

A. No.

Q. In the spring of 1939, did you manufacture or log a bunch of cedar?

A. Yes, I logged all the cedar up to the white pine, 5000 poles.

Q. Now, let us get that straight. You removed the cedar from all the territory in your operation from which the White Pine had previously been removed?

A. Yes.

Q. Would it be correct to say that you cleaned up your cedar job?

A. Yes.

Q. Now, is it customary to log cedar poles the entire year, or is it preferable to get them out in the spring?

A. In the spring.

Q. Would it make any difference in the peeling of the cedar poles?

A. Well, they peel better in the summertime; the sap is up.

(Testimony of Frank D. Robinson.)

Q. In taking out the poles, state whether or not they remove the bark?

A. They manufacture the pole right there in the woods.

Q. They take the bark off right there?

A. Yes. [908]

Q. Do you know how many poles you had in the spring of 1939 in the woods, approximately?

A. 5,000.

Q. Did you have any intention during the year 1939 to make any cedar poles in your operations after the 5th of June?

A. No.

Q. Now, how many million feet of white pine did you have on the ground on or about the 5th of June, 1939?

A. About 3,000,000.

Q. What is the practice relative to falling timber ahead of the truckers? By that, I mean, what quantities?

A. Well, I generally,—ordinarily, around 2 million feet; a million and a half ahead of the trucks.

Q. Let me ask you this: in June, did you and all other logging contractors cut great quantities of timber before you started trucking it out?

A. Not a great deal.

Q. Why not?

A. Because it deteriorates; it spoils, turns blue.

Q. First of all, it deteriorates?

A. Yes.

Q. It turns blue?

A. Yes.

Q. Please state what you mean when you say that it turns blue? [909]

A. When it turns blue, it is not good for lumber.

(Testimony of Frank D. Robinson.)

Q. The blue stains the wood, is that it?

A. That is right.

Q. And that blue only concerns the sapwood?

A. It is all right, except that it turns blue.

Q. And when it turns blue, it loses its value?

A. Yes.

Q. Does it have any other effect upon the lumber?

A. It makes poor lumber, and they don't get the price for it.

Q. If people see White Pine lumber that is blue,——

A. (Interposing) They don't want it.

Q. It is No. 4 lumber? A. Yes.

Q. There is not a good price for No. 4 lumber?

A. No.

Q. If it was not for the fact that the lumber is blue, it would be No. 1? A. Yes, very likely.

Q. In addition to deteriorating, and becoming blue, what else?

A. Well, if they lay over June or July, and it becomes warm, the wood gets holes in it; the bugs get into it.

Q. The bugs get into it? A. Yes. [910]

Q. What does the bug do when it gets into the logs? A. He bores it full of holes.

Q. And when that log is manufactured into lumber, what becomes of the lumber?

A. The lumber is full of holes.

Q. What kind of lumber is it?

A. No. 4 lumber.

Q. And do these logs check? A. Yes.

(Testimony of Frank D. Robinson.)

Q. What do you mean by checking?

A. When it gets hot, they start checking; the butts open and crack; the ends crack.

Q. They crack? A. Yes.

Q. What is the result of the checking?

A. Well, that checks quite a distance into the end, and if they cannot trim it, they have to cut it back, maybe 16 inches or two feet.

Q. The checking is primarily at the end of the log? A. Yes.

Q. In cutting the log, you like to have a little trim? A. Yes.

Q. If it checks a little bit, it means that you have to cut off two feet? A. Yes. [911]

Q. What are the usual lengths of logs?

A. 16 feet is the usual length of the board.

Q. And if they can't make it 16 feet, they make it 14 feet? A. Yes.

Q. If it is checked there, they have to cut it down to 12 feet? A. Yes.

Q. Are there any other bad disadvantages in leaving lumber or timber or logs in the woods?

A. Fire.

Q. What about the fire hazard if the timber lays there?

A. If the timber lays there, the fire will burn it up, if it gets a burn; it is a fire hazard there. It adds just that much to the fire hazard.

Q. Is it practical to burn brush while you have logs on skidways; or when you have the skidways full of logs? A. No.

(Testimony of Frank D. Robinson.)

Q. In other words, it is not the practice to burn brush until the end of the logging season; until all of the logs have been removed and taken away?

A. Yes, that is right.

Q. Now, state whether or not white pine timber has a good many branches, and there is a lot of brush left after the logging? A. Yes.

Q. What kind of leaves or needles does white pine have?

A. Well, they are pretty dry in two or three weeks after [912] they have been cut.

Q. They call those needles? A. Yes.

Q. Are they very inflammable, and will take make a good fire?

A. Yes, they certainly will.

Q. Will they burn up in a hurry after they have been cut? A. Yes.

Q. The same with the branches? A. Yes.

Q. In other words, a fire in the woods is a menace every logger has to deal with when he logs?

A. Yes.

Q. And probably there is nothing the logger fears more than the possibility of a fire?

A. That is true.

Q. Now, what is the general practice in an effort to guard against fire?

A. What do you mean?

Q. What has been done by yourself and others in endeavoring to eliminate the fire hazard?

A. You have to build fire trails, and the roads you put in, you have to have built with that in mind;

(Testimony of Frank D. Robinson.)

you have to have fire equipment in your camp; you have to have a fire pump; you have to have a fire hose; just the same as the State requires you to have in the camp. [913]

Q. What does the State do relative to protecting against fire in the summertime?

A. They have fire trail lookouts.

Q. And do they have men that go to the camps?

A. There is a man in camp all the time employed by the Protective Association.

Q. A patrolman? A. Yes.

Q. Smoke chasers, they call them?

A. Yes, smoke chasers.

Q. Who owns the real estate, or the land upon which you are logging?

A. The Humbird Lumber Company, I think, owns the land.

Q. And they own the standing timber until it is cut? A. Yes.

Q. Did the Humbird Lumber Company in the year 1939 have any men in your camp checking up on fire? A. Yes.

Q. And did these men check up on any other thing? A. Yes, on logs, fire and brush.

Q. Why did they check up?

A. That was their job; Mr. Dunn was there quite a bit.

Q. Who is Mr. Dunn?

A. He is a cruiser for the Humbird Lumber Company.

(Testimony of Frank D. Robinson.)

Q. What did Mr. Dunn do in checking your sawyers? [914]

A. He watched the stumps.

Q. What do you mean by watching the stumps?

A. The stumps are supposed to be cut 14 inches.

Q. From the ground?

A. From the upper side; if you saw the stump off at two feet, you would lose just that much timber; he would measure the logs, also, for lengths.

Q. You spoke of the 16-foot log? A. Yes.

Q. How much overage does the sawyer cut the log in order that they might get 16-foot length lumber out of the log? A. 5 inches maximum.

Q. 5 inches over? A. That is the limit.

Q. What is the result if they cut the stump too high?

A. They would just be not living up to the contract.

Q. That is true. Let me put it this way: are you wasting that much timber?

A. That is right.

Q. If the stump is cut too high, that will just be that much waste? A. That is right.

Q. Did the Humbird Lumber Company watch you? A. Yes, Mr. Dunn did.

Q. If they were not cut right, what did the Humbird Lumber [915] Company do?

A. They told me to cut it right, or get rid of the sawyer; they would tell me to get rid of the sawyers.

Q. Do you know a man by the name of Ole Pearson? A. Yes.

(Testimony of Frank D. Robinson.)

Q. Who is he?

A. He handles the Humbird Lumber Company holdings.

Q. He is acting here as superintendent of the Humbird Lumber Company?

A. I think so.

Q. Did Mr. Pearson ever have occasion to go into your operations?

A. Yes, many times, to check it over, with Mr. Dunn.

Q. What for?

A. To look over the operations and see that the contract was lived up to. When we cut down a tree, you sometimes have to long-butt it for rot.

Q. Why do you long-butt a log?

A. To get away from the rot.

Q. And why do you do that?

A. Well, if the rot is in the log, it has to be cut out. If the quality of the timber is not right in the butt, we have to cut it off. If it is $33\frac{1}{3}$ per cent. sound, we take it; if it is rotted off, we cut it to where it is sound. Sometimes if the sawyers don't know their business, they will cut it [916] 30 feet up when they only should have cut it 16.

Q. Mr. Pearson wanted every log that had $33\frac{1}{3}$ per cent. lumber in the log? A. Yes.

Q. Do loggers differ sometimes on how much good lumber there is in a log? A. Many times.

Q. I will ask you whether or not you had any conversation with Mr. Pearson relative to cutting timber too far ahead of the truckers? A. Yes.

(Testimony of Frank D. Robinson.)

Q. What did he tell you?

A. He made me take my saws off; plenty of times he did that in 1938 or 1939.

Q. Did he ever tell you you had too many logs down, or too many on skids?

A. Yes, too many cut ahead.

Q. If Mr. Pearson complained regarding having too much timber down, it was incumbent upon you to slow up the sawyers until you got the timber out of the way? A. Yes.

Q. Now, Mr. Robinson, there has been more or less testimony in the past week relative to a certain conversation which you had particularly with an individual by the name of Herbert Johnson, and another man by the name of Leon Wise. Now, on or [917] about the 6th day of June, at your camp, in your office, it was alleged by Mr. Wise that he stated to you,—that you stated to him that if this camp was organized you would shut her down. Did you hear that testimony? A. No.

Q. Did such a statement ever come through you to Mr. Wise? A. No.

Q. At that time, or at any other time?

A. No.

Q. Mr. Wise stated that on one occasion you lectured him?

A. I did not. I never lectured Mr. Wise in my life.

Q. He said you called him a sucker?

A. I didn't.

(Testimony of Frank D. Robinson.)

Q. Mr. Wise further testified at considerable length relative to a conversation in your office at the camp on or about the same date, in which you were alleged to have invited him into the office, and that you, Arden Davis, and Mr. Wise, went into your office, and that you then locked the door and put the key to the door in your pocket. Did you do that?

A. I did not. We had no lock on that door on the inside.

Q. What kind of a lock is on the door?

A. There is a Yale lock on the outside.

Q. What did you have on the inside?

A. Just a catch on the inside.

Q. State whether or not you put the key in your pocket? [918]

A. No.

Q. You did not threaten Mr. Wise at that time, did you?

A. No, sir.

Q. At that time or place, or at any place other than that at the camp, on or about the same date, did you tell Mr. Wise that you would not permit the union men to hold a meeting in your camp?

A. No.

Q. What did you tell them?

A. I told them to go ahead and hold the meeting.

Q. And did they hold the meeting?

A. Yes.

Q. Mr. Wise made the statement that on or about the same time Mr. Brown's father,—meaning Jim Brown's father,—owned "all of this stuff here". Did you make such a statement?

A. No, I never made any such statement.

(Testimony of Frank D. Robinson.)

Q. Did you ever tell Mr. Wise, or any of the other employes up there that that was a Long Lake Lumber Company Camp, and that you had to do what the officials of the Long Lake Lumber Company told you to do? A. No.

Q. Did any of the officials of the Long Lake Lumber Company tell you to shut that camp down last June? A. No.

Q. Now, there has been testimony by Mr. Wise and one other [919] that you met a camp committee in your office the evening that they held their meeting. Did you? A. Yes.

Q. State whether or not at that time you told Mr. Wise, Mr. Johnson or any other person, that you would recognize this committee as the bargaining committee for the men, and that you would recognize Local 119 of the IWA? A. No.

Q. Did you tell them before or at any other time, at any place, that you had recognized their union?

A. No.

Trial Examiner Hektoen: Will you read the last two questions and answers, please, Mr. Reporter?

(Thereupon, the last two questions and answers were read aloud by the reporter as above recorded.)

Trial Examiner Hektoen: This has reference to the union meeting?

Mr. Hunt: At any time.

Q. (Mr. Hunt) Did you at this time discuss with these men camp conditions? A. Yes.

(Testimony of Frank D. Robinson.)

Q. Did the men complain about the lack of a bull cook?

A. Not at that time. Mr. Johnson——

Q. Was it at these meetings,—any of these meetings, that the complaint was made that you didn't have a bull cook? [920]

A. Yes.

Q. What did they say?

A. They said they wanted me to put a bull cook in.

Q. What did you tell them?

A. I told them that I had a bull cook.

Q. Did they complain about a lack of sheets?

A. They said they wanted clean sheets; they said they wanted clean sheets every two weeks. They had worked for me for two years, and they knew that if they wanted them changed before that time, they could come up to the office and get them, and I told them so.

Q. What did they say about the electric light being put on?

A. I said they always had electric lights before that. I told them that just as soon as we could get them fixed, they would be fixed.

Q. What was said about a leaky roof?

A. Johnson said something about that, and I told them that I had plenty of buildings there, and that there was plenty of bunkhouse room and good bunks without having the men sleep in a bunkhouse where the roof was leaking; that would be fixed, but they didn't have to sleep where the roof was leaking.

Q. Was anything said about the showers?

(Testimony of Frank D. Robinson.)

A. Yes, that they wanted the shower baths turned on. I said that they had froze up,—and the practice I had was always to cut off the showers after the season. But, they had frozen up, and we were going to fix them, and as soon as we could fix them, [921] they would be turned on. They had had the showers for the two years before.

Q. Have you always been willing to talk with your men relative to camp conditions?

A. Yes.

Q. And do your men come up and talk with you at any time that you are around? Has that been customary?

A. Yes, any time they want to.

Q. As a rule, are you at the job when you are operating?

A. Yes.

Q. Have you ever been away from the job for any particularly unusual time?

A. Not over two or three days at the most at any time.

Q. Does any man have to get permission to talk with you about the work?

A. No.

Q. If they wanted to talk with you, they can come right up and talk with you?

A. They can come up and talk with me at any time, yes.

Q. Are your logging operations classed as seasonal?

A. Yes.

Q. When would you ordinarily start your work in the spring?

A. It all depends on the weather.

Q. When do you usually start?

(Testimony of Frank D. Robinson.)

A. Along in April or May, for poles. And then in June or July on logs. [922]

Q. About when are your operations at the peak?

A. Along the last of July or the first of August.

Q. And they usually close down when?

A. In November.

Q. What closes you down in the fall?

A. The weather,—rain.

Q. You start up somewhat gradually, putting out first the cedarmakers? A. That is right.

Q. And then you put out the skidders?

A. Yes.

Q. They usually come to work before the truck haulers?

A. Oh, yes; a couple of months, sometimes.

Q. On the 5th day of June, state whether or not your camp was fully organized and going?

A. No.

Q. In other words, it was just getting started?

A. I was just finishing up on my poles; I had them all cut and skidded.

Q. Now, did you let an entire jammer crew go about the 5th of June, 1939?

A. I think I laid off a jammer crew; the jammer was broken down, and I laid the crew off until it was repaired.

Q. The jammer was broken down?

A. Yes. [923]

Q. What was it doing then?

A. Cleaning up logs.

(Testimony of Frank D. Robinson.)

Q. Loading a little? A. Attempting to.

Q. The jammer broke down? A. Yes.

Q. Then what happened?

A. We had to have it repaired.

Q. What did the boys do with it when it broke down? A. They put it in the shop.

Q. What did you do with the men?

A. I laid them off.

Q. Why?

A. Because the jammer was broken down; there was nothing for them to do.

Q. Did you tell these men when work resumed and things got fixed up, they would come back to work?

A. I think I did tell them that when they got going, they could come back.

Q. Did these men later on come back to you?

A. They all went back.

Q. But not running that jammer, is that right?

A. No.

Q. Did you have an individual by the name of Clyde Smith working on the jammer, on that jammer? [924] A. Not on that jammer, no.

Q. He was working on some other jammer?

A. No, not that year; not in 1939.

Q. What was the name of the man that you told could not work on one of the jammers, because he was not competent?

A. That was Clyde Smith.

Q. Clyde Smith asked you later to work on the jammer? A. Yes.

(Testimony of Frank D. Robinson.)

Q. Did he go to work on the jammer?

A. No.

Q. Why not?

A. Because I told him that I didn't think he was capable of working on it.

Q. Was he capable of working on it?

A. No.

Q. About when did you start replacing your horses with power equipment? A. In 1938.

Q. I mean, power equipment? A. In 1938.

Q. You didn't have any arguments over labor unions in 1938, or labor conditions? A. No.

Q. You disposed of your horses in 1938?

A. Some of them, yes. [925]

Q. And you continued that, and have continued up to this date, that as fast as you replaced the horses, you put in power equipment? You have done that as fast as feasible? A. Yes.

Q. What power equipment did you get in 1938?

A. I got one of these cat skidders from Stacel.

Q. You were replacing certain skidders with what you call cat skidders? A. Yes.

Q. What kind of skidders did you have before? Before that you had an old truck chassis upon which was built a jammer? A. Yes.

Q. And the jammer was powered by another gasoline engine? A. Yes.

Q. Other than the engine which propelled the vehicle?

A. You could make them different ways; you

(Testimony of Frank D. Robinson.)

could make the power take off from the motor on the truck; I had one like that.

Q. What other equipment, if any, did you buy that would have a tendency to replace the horses in 1938? A. Just the skidders, is all.

Q. How many skidders did you have?

A. In 1938, I think I had two.

Q. You think that you bought two new ones in 1938? A. Yes.

Q. How many,—were they new or second-hand? How many did you [926] get in 1939? A. One.

Q. One? A. That is right.

Q. Now, these new power skidders, are they more complicated or technical than the old skidders?

A. Yes.

Q. Why? A. They have double drums.

Q. All right; the old skidder had a single drum?

A. Yes. [927]

Q. (Mr. Hunt, continuing) Mr. Robinson, prior to recess you made a statement relative to new powered equipment which you bought in 1938 and 1939. Do you want to correct that statement?

A. Yes.

Q. All right.

A. These two new jammers, I bought them in 1939. I had just one in 1938, a Cletrack.

Q. You bought a new Cletrack in 1938?

A. It was a used one, and I rebuilt,—I built the jammer.

Q. You built the jammer on the Cletrack tractor?

A. Yes.

(Testimony of Frank D. Robinson.)

Q. In 1939, you bought two new ones?

A. Yes.

Q. Mr. Robinson, state whether or not on or about Thursday, June 29, you had a meeting at your office in the J & L Building, Sandpoint, Idaho, at which time you were present, Arden Davis, myself, Mr. Roll, Mr. Johnson, and three members of the so-called Camp Committee; do you recall that?

A. Yes.

Q. Now, what was said and done relative to holding an election by your employes at that time?

A. It was agreed that they would hold an election in the camp; I think it was agreed it would be held on the 6th of [931] July.

Q. Was such an agreement consummated at that time? A. Yes.

Q. Do you remember the discussions as to when that election should be held?

A. The 6th of July.

Q. That is what you arrived at. Did you suggest any other date?

A. I am not sure whether I did.

Q. Well, was there any difference of opinion relative to the 6th? A. Yes.

Q. What was that difference of opinion? Well, let us go back; when did you propose to open your camp after the 4th of July?

A. On the 6th of July.

Q. What did you tell the men relative to the advisability of holding an election on the 6th?

(Testimony of Frank D. Robinson.)

A. It was agreed upon that we were to hold an election on the 6th, I think it was; we agreed to hold an election,—let's see,—I want to get that straight. What is the question?

Mr. Hunt: Will you read the question, please?

(Thereupon the last question was read aloud as above recorded.)

A. I told them that we would hold an election. [932]

Q. (Mr. Hunt) Let me put it this way: Did you first ask them to hold the election on or about the 8th or 9th? A. Yes.

Q. Why?

A. The men were scattered all over, and I thought that that would be the best time to get the men in, about the 8th, 9th or 10th.

Q. And did the men want the election on the 6th? A. Yes.

Q. And did you agree to that? A. Yes.

Q. When was the election to be held?

A. The 6th.

Q. I mean, where was the election to be held?

A. In the camp.

Q. And where else? A. And in town.

Q. Why did you have two different places, Mr. Robinson?

A. Because some of the men were in town, and some of them were in camp.

Q. Well, after we entered into that agreement, what took place?

(Testimony of Frank D. Robinson.)

A. Well, you and Mr. Roll left the office to go down to try to draw up this agreement, and later we,——

Q. What did you and Davis and Johnson and the committee [933] do?

A. It was agreed upon that we were to have this meeting.

Q. After Mr. Roll and I left, what did Arden Davis, Johnson and the Committee do in your office?

A. I don't remember what they were talking about then.

Q. Did they check the payroll?

A. They may have checked the payroll.

Q. Did Mr. Davis have the payroll at that time?

A. I think he did.

Q. After that, did you come to my office?
Shortly after that?

A. Yes.

Q. Was Mr. Johnson there?

A. I think Mr. Johnson was either there or he came in shortly after that.

Q. All right. What was said by Mr. Johnson?

A. Well, Mr. Johnson came in, and then, when you were drawing up the agreement, Mr. Johnson said it was all off.

Q. Was an election ever held after that?

A. No.

Q. Did the Camp Committee or Mr. Herbert Johnson after that date ever come to you and tell you that the 6th of July was O.K. to hold an election?
A. No, they never did.

(Testimony of Frank D. Robinson.)

Q. Now, Mr. Robinson, there has been more or less discussion relative to an alleged picket line on the highway between your [934] camp and Pack River. Did you ever come up at any time when the picket line was there with a group of men whom you were taking to your camp for the purpose of working at the camp? A. Yes.

Q. Did you meet Mr. Johnson there at that time? A. Yes, I met Mr. Johnson there.

Q. What conversation did you have with Mr. Johnson?

A. That is when Mr. Rapp was there.

Q. What conversation did you have there at the picket line with Mr. Herbert Johnson?

A. Well, Mr. Johnson and I were talking, and I said, "Well, do you want to go to work? If you men want to go to work, all right."

I remember Johnson said, "These men are not going to work until you recognize the union."

I said, "Whenever you show me that you have a majority, Johnson, I am willing to recognize you."

And he said, "Yes, you made the statement that you broke one union and that you were going to break this one." Then I told Johnson, "You are a damned liar; I never made such a statement as that."

I told him that I was born and raised within 150 miles of this town, and if he wanted to check back for 25 years, he would find there was never a mark

(Testimony of Frank D. Robinson.)

where I had had any labor trouble with any man, or any bunch of men. [935]

Q. What did Johnson say as to that?

A. He never said a word.

Q. Was Mr. Rapp there at that time?

A. Yes.

Q. State whether or not you ever told Mr. Rapp that you would not recognize the union?

A. No.

Q. Did you ask Mr. Rapp at any time to open the highway so the men could go through?

A. Yes. [936]

Q. (Mr. Hunt) Did Mr. Rapp open the road?

A. No.

Q. Later on, did you take some men up there when the picket line was there? A. Yes. [937]

Q. State whether or not on or about the 14th day of July you took some men through the picket line? A. Yes.

Q. Were there any officers there at that time?

A. I think that Mr. Webb and Mr. O'Donnell were there at that time.

Q. And the men went through?

A. The men went through.

Q. Did Mr. Herbert Johnson at any time at the picket line tell you that no man would go through to your camp until you recognized the union?

A. Yes.

Mr. Walker: I will object to that as leading.

Trial Examiner Hektoen: The question has already been answered before. He testified that John-

(Testimony of Frank D. Robinson.)

son said that no one was going to go through before the union was recognized.

Did this apply to the same conversation?

The Witness: Yes.

Q. (Mr. Hunt) State whether or not Leon Wise ever made the same statement to you at any time at the picket line? A. Yes.

Q. State whether or not you ever told Clyde Smith that if your [939] camp was organized, you would put on more cat jammers and run two shifts?

A. No, I don't think that I made that statement. [940]

Q. What kind of jammers are those jammers at the landings we have had testimony concerning?

A. Steam loading jammers.

Q. They are steam powered? A. Yes.

Q. Do they use those steam jammers in the woods? A. No.

Q. Why? A. Fire.

Q. They have a tendency to burn everything up?

A. Yes. [949]

Q. Mr. Robinson, in your dealings with the Long Lake Lumber Company, is it customary for that company to make a remittance upon any regularly designated date during the week or month?

A. No.

Q. How do you get money from the Long Lake Lumber Company?

A. We always call them up and tell them, "I need so much", and they make arrangements with

(Testimony of Frank D. Robinson.)

the bank, or send it up by letter, and we deposit it with the bank.

Q. Is it customary when you need money to make a requisition upon the Long Lake Lumber Company for it? A. Yes.

Q. If you didn't ask them for any money, they wouldn't send you any? A. No.

Q. Mr. Robinson, I take it that you know what the weather conditions were in the spring of 1939?

A. Yes.

Q. State generally whether the months of April or May were [952] wet or dry months; wetter than usual, or drier than usual?

A. Weather in May and June was wet, and in April it was drier than it had been before. In June it was awful wet, and in May, it was wet.

Q. Let us get down specifically to the first week in May of 1939. A. The first week in May?

Q. The first week in June, 1939, did it rain? Did it rain on the 4th of June? A. Yes.

Q. Did it rain on the 5th day of June?

A. Yes.

Q. Did it rain on the 6th day of June?

A. Yes.

Q. State whether or not you were able to truck logs on those days that I have mentioned?

A. No. [953]

Q. (Mr. Hunt) Mr. Robinson, state whether or not the roads at your operations in the Caribou Basin had dried out and had become solid or packed by the first week in June, 1939? A. No.

(Testimony of Frank D. Robinson.)

Q. What were the conditions?

A. It rained, and the roads were so soft and muddy that we could not truck.

Q. Did you have a heavy rain on or about that time?

A. On June 7, it was raining awful hard, and on June 6.

Q. What was the effect on the roads and culverts?

A. It washed out the roads and filled the culverts with dirt, and softened the roads so that it was impossible to carry on.

Q. What would happen if a loaded truck would attempt to go over the road? [954]

A. They would just bury themselves, sink down, or tip over.

Q. And if a truck went through, what would be the condition of the road after it got through?

A. It would be in such shape that it would take a long time to fix it up again.

Q. For the next truck?

A. For the next truck.

Q. Could you have operated economically, or in accordance with your usual operations at that time?

A. No.

Q. Have you testified heretofore relative to the amount of logs that were on skids in the woods in June,—June 6? A. Yes.

Q. Well, let us make sure. How many poles did you have? A. 5,000.

Q. Five thousand where?

(Testimony of Frank D. Robinson.)

A. Five thousand cut and skidded.

Q. How many logs were down in the woods and cut?

A. About 3,000,000 feet; close to that.

Mr. Hunt: That is all.

Trial Examiner Hektoen: Any examination, Mr. Potts?

Mr. Potts: No.

Cross Examination

Q. (Mr. Walker) Prior to June 7, Mr. Robinson, you hauled out truckloads of logs, did you not? You had hauled out some [955] truckloads prior to that, had you not? A. Yes.

Q. The Caribou Basin did operate in the season of 1937, did it not? A. I think so, yes.

Q. Do you recall how the weather conditions were in 1937?

A. No, I couldn't tell you now.

Q. Did you close down at any time from the beginning of the season until the end of the season in 1937 because of weather conditions?

A. I would not say, but I think there were times when the trucks could not haul in that time.

Q. But you did not lay off the fallers and buckers, did you?

A. Yes, I laid them off in the fall before I got through.

Q. Just a moment. At any time in the 1937 season, did you lay off the fallers and buckers because of weather conditions?

(Testimony of Frank D. Robinson.)

A. Well, now, I couldn't answer that; I don't know; that is so far away I couldn't tell you there.

Q. At any time during the 1937 season, did you lay off the fallers and buckers when the trucks were not operating because of weather conditions?

A. Yes. I laid them off, and put some on. I have done that during every season. And when I have got too many logs cut ahead, I would have to lay them off.

Q. At that time, in 1937, what was the situation? What was the situation at any time during 1937? Did you lay off the [956] buckers and fallers because of weather conditions?

A. Well, now, I couldn't tell you.

Mr. Hunt: Just a minute. I will object to that question, for the reason that he explained that he laid them off on account of weather conditions. I will have to use the same objection that counsel used, on the ground that it is a compound question. If he means that he laid off the sawyers and buckers on account of weather conditions affecting their work in the woods, that is one thing; if he lays off the sawyers and buckers on account of too much timber, that is another.

Trial Examiner Hektoen: Will you read the question?

(Thereupon the last question was read aloud as above recorded.)

Mr. Walker: That is a compound question?

Mr. Hunt: The prior question.

(Testimony of Frank D. Robinson.)

Trial Examiner Hektoen: Will you read the prior question?

(Thereupon the question referred to was read as follows: "At any time during the 1937 season, did you lay off the fallers and buckers when the trucks were not operating because of weather conditions?")

Mr. Hunt: It is ambiguous. He is trying to get out whether the sawyers were laid off because they could not take out the logs.

Mr. Walker: Just a moment. May the witness be excused from the room? [957]

Trial Examiner Hektoen: Yes, I think so. If you think that the question, "Did he lay off the sawyers and buckers on account of weather conditions?" is ambiguous, I would like to ask the witness if he thinks it is ambiguous. Do you understand the question?

The Witness: Yes, I can answer that question.

Trial Examiner Hektoen: The objection to that extent is overruled.

A. Yes, because in the fall of the year, when you get so many logs ahead, it starts to rain, and then you have too many ahead. Now, if you have a lot cut ahead, and it doesn't start to rain, the hauling could have been carried on. If there are too many left there, and it starts to rain, and you can't haul them, you cannot haul them until late May or June of the next year.

(Testimony of Frank D. Robinson.)

Q. (Mr. Walker) Your answer pertained to the fall of the year? A. Yes.

Q. Prior to the fall of the year, did you lay off the fallers and buckers because of weather conditions? A. Well, now, I don't know.

Q. Take the month of June, 1937, did you lay off any fallers and buckers at that time because of weather conditions?

A. Well, now, I couldn't answer that.

Q. Did you pay the men off, the fallers and buckers, at any [958] time in 1937, because of weather conditions?

A. Well, I don't know, I couldn't answer that, because, if I laid them off, I would pay them off.

Q. Oh, you would? A. Yes.

Q. Do I understand that it has been your practice always that whenever any of the men are laid off because of lack of work, you always pay them off immediately?

A. Yes, unless it is just one or two days, or something like that; just a short time.

Q. If the lay-off is for one or two days, you don't pay them off? A. No.

Q. Do you cause the men to vacate the camp?

A. No; that is immaterial; they can stay in the camp or else go home. [959]

Q. Let's go back. I was misinformed.

Do you recall laying off the jammer that Mr. Greg Moore, Mr. Ralph Peterson and Mr. Ted Early worked on? A. Yes.

(Testimony of Frank D. Robinson.)

Q. Was Mr. Bill Henry a member of that jammer crew, also?

A. Well, they were either skidding or loading at that particular time. When they are loading and they have a top loader, sometimes there are four men in the crew; and if they are just skidding, there are only three men.

I think at this time, the jammer was only skidding; I don't remember just whether Henry was there when the jammer broke down.

Q. If he was a member of the crew at that time, when the jammer broke down, Mr. Robinson, was Mr. Bill Henry laid off and paid off at the same time Mr. Greg Moore, Mr. Ted Early and Mr. Ralph Peterson were?

A. I think so; I am not sure whether he went that day, or went later, but he left the job, I know, at that time, or shortly after that. [960]

He left to go home, I believe. I will have to go to my records to get the dates of that. I wouldn't know.

Q. Well, the day that they were laid off, was the same day on which the union meeting was held; isn't that correct?

A. It was either the 5th or 6th; I am not sure. It was either one of those two days.

Q. Would it have taken about two days to fix the jammer?

A. It would have taken more than that; it had to have a complete overhaul before it went back to work.

(Testimony of Frank D. Robinson.)

Q. Excepting the overhaul, to fix the repairs, how long would it have taken?

A. If I remember right, I think we were around a couple of weeks working on it before we got it in shape to put it back to work.

Q. It took how long?

A. I think it was a couple of weeks, I said, to repair it.

Q. Once you had it down, you went "whole hog"?

A. We did a little bit more repairing on it, getting it ready to load for this season.

Q. Outside of the complete overhaul, how long would it take to do the repairing?

A. I don't know how long it would take to get the parts; sometimes it takes a few days.

Q. There is a Ford Garage in town?

A. Yes, but it didn't sell Model T's, I don't think. [961]

Q. That does not answer my question.

A. Yes, there is a Ford garage.

Q. Do you recall being in Spokane on Saturday, July 1, 1939? A. No, I don't.

(Thereupon a document was marked as Board's exhibit No. 9 for identification.)

Q. (Mr. Walker, continuing) Mr. Robinson, is there a newspaper published in Sandpoint by the name of the Daily Bulletin? A. Yes.

Q. And it was published as a daily paper in the month of July, 1939?

(Testimony of Frank D. Robinson.)

A. I think so; I think it is every day.

Q. I hand you what has been marked for identification as Board's exhibit No. 9, and for the purpose of refreshing your memory, I call your attention to that (handing document to the witness). Does it refresh your memory as having been in Spokane, Saturday, July 1?

A. I don't remember going in. I might have made that statement.

Q. Do you recall receiving a \$500 check from the Long Lake Lumber Company dated Saturday, January 1, 1939?

Mr. Hunt: I will object to that as immaterial, what happened in January, 1939. [962]

Mr. Walker: July.

Trial Examiner Hektoen: Did you mean "January"?

Mr. Walker: I will reframe the question.

Q. (Mr. Walker, continuing) Do you recall receiving a \$500 check from the Long Lake Lumber Company on Saturday, July 1, 1939?

A. I wouldn't know. I received checks so often whenever I called for money. I don't remember whether I got a check that day; I don't remember offhand.

Q. Will you, during the noon hour, refer to your records to refresh your memory in that regard? A. Yes.

Q. And also, during the noon hour, will you locate and produce the list of names of individuals you and Davis wrote down on July 5?

(Testimony of Frank D. Robinson.)

A. Yes.

Q. After July 7, and before the camp reopened in the month of July, 1939, during that interval, did Mr. Arley Chaney truck any logs from the Chaney strip?

Mr. Hunt: What was the name?

Mr. Walker: Arley Chaney.

A. He may have, on the road near the main camp, but you could get there, when you couldn't get any other place.

Q. (Mr. Walker) Did Mr. Jim Morrow truck any during that period? [963]

A. Mr. Morrow might have; he was cleaning up a few logs around there, and I think he hauled two or three loads of logs, and he pulled his truck out to the road with the caterpillar. There are a few loads that he may have hauled. [964]

Q. (Mr. Walker, continuing) I call your attention to your [978] testimony about the occasion of July 14, when Mr. Webb and Mr. O'Donnell were at the picket line, and the men went through. Now, do you have in mind what I am referring to?

A. Yes.

Q. I call your attention to what has been marked as Board's exhibit No. 6, and ask you if the individuals who went through the picket line on that occasion were such individuals whose names are listed on board's exhibit No. 6, and opposite whose names appear the dates when the individuals went to work during the month of July?

(Testimony of Frank D. Robinson.)

A. Well, I couldn't give you that, because I don't remember.

Q. Do you recall the occasion of the camp re-opening on or about July 20? A. Yes.

Q. Were the individuals who went through the picket line on that particular day, such individuals who went to work in the month of July, prior to July 20, 1939?

A. I think so. Now, I am not sure of that; I am not clear on that, but I think that they all did.

Q. Were any of those individuals who went through the picket line at that time, persons who had worked in Caribou Basin prior to June 7, 1939?

A. Yes.

Q. Referring now to the fifth page of Board's exhibit 6, do you recall Mr. Swen Boothe? [979]

A. No. Some of those names I never even heard of.

Q. Well, did you hear Mr. Davis testify that the figures on Board's exhibit No. 6, under the heading of "July", reflect the first day in July when such individuals went to work? A. Yes.

Q. If any individual listed on Board's exhibit No. 6 does not show a figure under the heading of June, it would mean that such individual prior to the time the date is set out under the heading of "July" had not worked at Camp in the month of June, 1939; is that correct?

A. Well, now, I don't quite understand you.

Q. Particularly referring to the fifth page of Board's exhibit 6, any individual listed anywhere

(Testimony of Frank D. Robinson.)

on Board's exhibit No. 6 who does not have a date under the heading of the word "June", would be an individual who did not work at camp during the month of June, is that correct?

A. That is correct. [980]

Q. Mr. Robinson, do you recall the meeting held at your office between yourself and the union committee in which Mr. Hunt and Mr. Johnson were not present?

A. In my office?

Q. In your office? [998]

A. Yes.

Q. At that time, did the union committee offer to take a card check?

A. No, I don't think so. I wanted to put it to an election. I wanted an election, and I think that they wanted to produce the cards, and there was some argument both ways, and we didn't seem to get any place with it.

Q. Were you advised not to sign any instrument embracing a provision that if the union should prove its majority as the result of a card check, that it would thereby become the exclusive bargaining agency for all the employees?

Mr. Hunt: That is objected to until it can be shown who, if anybody, advised that, and who, if anybody, counsel is referring to.

Q. (Mr. Walker) Did you have an attorney during the month of June, 1939?

A. Yes.

Q. Were you being advised by him relative to the matter of negotiations or attempted negotiations between yourself and the Union?

(Testimony of Frank D. Robinson.)

A. No, I don't think,—I don't quite get the question.

Trial Examiner Hektoen: Read the question, please.

(Thereupon the last question was read aloud as above recorded.)

A. No. [999]

Q. (Mr. Walker): Were you ever advised whether or not the Union Committee at any time agreed to the holding of an election on July 6, 1939?

A. I agreed to hold an election in July.

Mr. Walker: Read the question to the witness, please.

(Thereupon the last question was read aloud by the reporter as above recorded.)

A. Yes.

Q. (Mr. Walker): Who advised you that?

A. That is what the agreement was; the committee agreed to hold an election.

Q. Do you remember the incident when the committee agreed to hold an election? A. Yes.

Q. And subsequently, the committee withdrew, did they not? A. Yes.

Q. After the time the committee withdrew, were you advised that thereafter the committee agreed to hold an election on July 6? A. No.

Mr. Walker: That is all.

Mr. Hunt: That is all, Mr. Robinson. You may be excused.

(Testimony of Frank D. Robinson.)

Trial Examiner Hektoen: Mr. Robinson, you may be excused. We will have a recess of 10 minutes, at the end of which time I want to ask you some questions. You will be here, will you [1000] not?

The Witness: Yes.

(Thereupon, at this time a short recess was taken, after which proceedings were continued as follows:)

Trial Examiner Hektoen: The hearing will be in session. I think Mr. Robinson may be excused. I don't believe that I have any questions.

(Witness excused)

Trial Examiner Hektoen: Call your next witness, Mr. Hunt.

Mr. Hunt: Mr. Johnson.

FRED JOHNSON

called as a witness by and on behalf of the respondent F. D. Robinson, being duly sworn, testified as follows:

Direct Examination

By Mr. Hunt:

Q. Your name, please? A. Fred Johnson.

Q. Where do you reside, Mr. Johnson?

A. Sandpoint.

Q. What is your occupation? A. Logger.

Q. A logging contractor? A. Yes, sir.

(Testimony of Fred Johnson.)

Q. Were you a logging contractor in Bonner County in 1939? A. I was. [1001]

Q. And where were you logging at that time?

A. On Trout Creek.

Q. Where is Trout Creek?

A. It is 20 miles north of Sandpoint.

Q. How far, approximately, is it from the Caribou Basin where Frank Robinson was logging?

A. The Caribou Basin would be, in a straight line, about 18 to 20 miles, west.

Q. And were the weather conditions in Robinson's Camp about the same as in your own camp?

A. I think it would be more favorable in my camp than where he is.

Q. Why, Mr. Johnson?

A. Because I am in a lower altitude, and have a better road.

Q. Who were you logging for in June of 1939?

A. The Diamond Match Company.

Q. Do you remember what the weather conditions were in April, May and June of 1939?

A. All I can go by is the records that I have, and the dates I have trucked, which I have in my pocket here.

Q. Before we come to the specific dates, did you have much rain in the month of June, 1939?

A. Lots of it.

Q. And did the rain interfere with your trucking of logs in your operation in June of 1939?

[1002]

A. It certainly did.

(Testimony of Fred Johnson.)

Q. Were you able to truck?

A. I trucked some.

Q. What, if anything, did you do in order to be able to truck at all?

A. The roads we used in May, I had to plank them in June in order to work.

Q. You say you planked the road; will you say what you mean when you planked the road?

A. We used a three-inch plank.

Q. Did you put them on the road?

A. Yes, and we put ties in under them, and spiked them to the ties, so that they would stay in position on the road.

Q. You mean, you made the road so that the wheels of the logging trucks would ride upon the planks? A. That is right.

Q. If the road had not been planked, could the trucks have gone through? A. No.

Q. In June of 1939, you had to build a plank road in order for the trucks to haul out of your operation? A. Correct.

Q. After the trucks got out of your operations, did they get on a better highway?

A. Well, it is an old road; a hard-bottom road.

[1003]

Q. It had been graveled?

A. It is a graveled road; it has not even been graveled; but it is not necessary to gravel it; it is gravel.

Q. It is a natural gravel road?

A. A natural gravel road.

(Testimony of Fred Johnson.)

Q. This road had been graveled at public expense?

A. No. I had taken care of it in previous years.

Q. And when you got on that road, you were able to go? A. That is right.

Q. Do you remember specifically whether it rained during each day for the first week in June?

A. Well, I can tell from the dates I have here, when I trucked; I can tell what dates I trucked there, and the days when it was raining, I couldn't truck.

Q. This memorandum which you hold in your hand was made by you from the records in your office? A. Yes.

Q. Referring to your records, will you tell me what days in June of 1939 you were able to truck, and the days on which you were able to haul logs?

A. I trucked the first, second and third of June.

Q. Then what happened?

A. Then it rained. And then I trucked on the 12th, 13th, 14th, 15th; and then we had to wait again, from the 16th to the 21st, it rained; on the 21st, 22nd and 23d; and then there is a [1004] space there to the 27th. The 27th, 28th, 29th and 30th, and then it rained again.

Q. That is as far as we want to go. Well, we might as well go on. Have you the record?

A. To the 3rd of July. The first, second and third of July, it rained hard, and we didn't truck anything the first week. After the Fourth,—

(Testimony of Fred Johnson.)

Q. How long after the third of July was it before you were able to start trucking again?

A. I am not positive of the date. It was a few days.

Q. It rained on the 4th?

A. Not on the 4th; it rained hard on the 3d; and the 4th, I don't believe, was a rainy day. [1005]

Cross Examination

Q. (Mr. Walker): Did you observe the Fourth of July holiday at the Diamond Match camp?

A. Absolutely.

Q. For how long a period were the men laid off?

A. Generally, from about the 3rd, and then they started to work three or four days after the 4th; something like that.

Q. Along during the 7th or 8th; along in there?

A. Yes.

Q. And do I understand that the reason that you were able to [1008] truck was because you had a planked road?

A. That is right.

Q. And that the main highway was planked by you?

A. It had been graveled for three or four years previously by me. [1009]

(Thereupon the question referred to was again read as follows: "Did your fallers and buckers continue working during June?")

A. A part of the time, when it was not raining.

Q. (Mr. Walker): Did you pay them off?

A. We didn't pay them off until they were through work.

(Testimony of Fred Johnson.)

Q. You trucked on the first, second and third of June, and then you were off until the 12th?

A. That is correct. The first, second and third, and then we worked the 12th, 13th, 14th and 15th.

Q. Now, at the conclusion of the work on the day of the third, did you pay off your truckers?

A. No, we didn't pay them until the end of the month. [1011]

We don't pay our men until the end of the month, except when they quit.

Q. Did the fallers and buckers evacuate the camp?

A. Most of them go home when it rains.

Q. Did you ask your fallers and buckers to leave the camp?

A. I want them there in case it might clear up.

Q. Did you ask your truckers to leave camp when they were off from the period of June 3 to June 12?

A. They can suit themselves.

Mr. Walker: That is all.

Redirect Examination

Q. (Mr. Hunt): Just one question. Let us get it clear about the roads which you planked. Can you tell me which road it was that you planked?

A. Just the timber roads into the timber.

Q. Were they the main roads in your operation?

A. They were, so far as getting logs out of the timber into the main road were concerned.

Q. Did you haul from all of the roads in your woods during the month of June?

A. All of the logging roads, we did, yes.

(Testimony of Fred Johnson.)

Q. Were there any roads that you could not get over at all?

A. Those that were not planked, we could not get over.

Mr. Hunt: That is all.

Recross Examination [1012]

Q. (Mr. Walker): When did you first construct the roads which were planked?

A. The roads were made late in the fall of 1938; that is, in September, I think, in 1938.

Q. And the first time then they had been used for the hauling of logs was in the spring of 1939?

A. That is correct.

Trial Examiner Hektoen: I have one question. Is it your custom to build plank roads?

The Witness: Well, it is not, unless it is necessary.

Trial Examiner Hektoen: Well, it must have been necessary in 1938 in the fall?

The Witness: The reason for building them in the fall is to let them set during the winter, so that they can pack.

Trial Examiner Hektoen: And then you, as an experienced operator, anticipate difficulty in the spring, is that correct?

Trial Examiner Hektoen: That is all.

(Witness excused)

Mr. Hunt: Mr. Knight, will you please take the stand?

RALPH KNIGHT

called as a witness by and on behalf of the Respondent F. D. Robinson, being first duly sworn, was examined and testified as follows:

Direct Examination [1013

Q. (Mr. Hunt): Will you state your name?

A. Ralph Knight.

Q. Where do you reside?

A. Sandpoint Branch Experiment Station.

Q. Where is that Experiment Station in relation to the city of Sandpoint?

A. Just out north; on Boyer Avenue, just outside of the city limits. I believe the S&I track is the City Boundary; we are just across the track.

Q. What are your duties at the experiment station?

A. The station there is a regular agricultural experiment station, which is a branch of the main station at the University. I superintend all the experimental work that is conducted there; in addition, I am one of the state official Weather Observers.

Q. And in your capacity as a weather observer, do you maintain daily readings of precipitation, weather conditions, and so on?

A. Yes, every day.

Q. And did you have occasion to do that work during the year 1939? A. Yes.

Q. During the entire year?

A. Yes, the entire year.

Q. I will ask you whether or not at my request,

(Testimony of Ralph Knight.)

you checked the records during the year 1939 at your station? A. Yes, I did. [1014]

Q. You checked the records? A. Yes.

(Thereupon a document was marked as Respondents' exhibit No. 8 for identification.)

Q. (Mr. Hunt): Mr. Knight, handing you an exhibit which has been marked as Respondents' exhibit No. 8 for identification, I will ask you to look that over and tell me whether or not that shows, first, on the left-hand side, the precipitation for the month of June, and for the first 15 days of July, 1939. A. Yes, it does.

Q. What is represented on the column to the right? In other words, does the other column show precipitation, month by month, for the year 1939?

A. Yes, that is right.

Q. What does the letter "T" indicate in various places?

A. The "T" just indicates a trace; that is all.

Q. That stands for a trace? A. Yes.

Q. And that would be how much?

A. Less than one-hundredth of an inch.

Q. And the other decimal points show,—each one shows one hundredth of an inch?

A. That is right.

Mr. Hunt: We will offer this in evidence.

Mr. Walker: No objection. [1015]

Trial Examiner Hektoen: It will be admitted.

(Thereupon the document heretofore marked Respondents' exhibit No. 8 for identification, was received in evidence.)

(Testimony of Ralph Knight.)

RESPONDENTS' EXHIBIT No. 8

PRECIPITATION

1939

June	1,	T
	2.....	—
	3.....	—
	4.....	.18
	5.....	.11
	6.....	.06
	7.....	.16
	8.....	.07
	9.....	.11
	10.....	.02
	11.....	T
	12.....	—
	13.....	.22
	14.....	—
	15.....	.20
	16.....	.22
	17.....	.30
	18.....	.29
	19.....	.04
	20.....	.46
	21.....	—
	22.....	—
	23.....	.20
	24.....	—
	25.....	.23
	26.....	—
	27.....	—
	28.....	—
	29.....	—
	30.....	—
July	1.....	—
	2.....	—
	3.....	.33
	4.....	.04
	5.....	T
	6.....	T

(Testimony of Ralph Knight.)

7.....	—
8.....	—
9.....	—
10.....	—
11.....	—
12.....	—
13.....	—
14.....	—
15.....	[Illegible]

1939

Jan.	4.63
Feb.	2.70
Mar.	1.91
Apr.64
May57
June87
July45
Aug.01
Sept.62
Oct.	2.38
Nov.84
Dec.	6.33

Total24.95

Ave. Per Mo. 2.08

Q. (Mr. Hunt): Would you prefer to refer to the original records, or this exhibit (indicating)?

A. I don't think that it would make any difference; I checked them, and they correspond exactly.

Q. Looking at your records, would you tell me what the record shows with regard to precipitation on the first of June, 1939?

A. On the first day of June, 1939, it showed only a trace of precipitation.

(Testimony of Ralph Knight.)

Q. How about the 2nd? A. None.

Q. The third? A. None.

Q. The fourth? A. .18.

Q. On the fifth? A. .11.

Q. On the 6th? A. .06.

Q. On the 7th? A. .16.

Q. Now, tell me how many days it went on before there was a [1016] day without any rain?

A. It rained,—the rains continued. It rained again on the 8th; again on the 9th; it rained again on the 10th; with just a trace on the 11th. On the 12th, there was no rain.

Q. All right, that is far enough.

Now, look at your records, again, Mr. Knight, and please tell me how many days during the month of June was it either raining or cloudy, according to your records?

A. During the month of June we had 17 days which were cloudy, and 8 additional days which were partly cloudy.

Q. Of course, on some of the cloudy days, you also had rains on those days?

A. Some of them, yes.

Q. There is no differentiation there?

A. No.

Q. The cloudy days would include some days that rained? A. Yes.

Q. How long have records been kept at the experiment station?

A. The records were started there in November of 1910.

(Testimony of Ralph Knight.)

Q. Do you have records showing precipitation for the month of June, for every year since 1910?

A. Yes.

Q. Will you tell me what the average precipitation for your station for the month of June is?

A. The average precipitation for June from 1911 to 1936, [1017] inclusive, shows 1.59.

Q. Pardon me. Will you repeat that figure?

A. 1.59.

Q. Now, will you look at your records and tell me what the precipitation was for the month of June, 1939? A. It was 2.87.

Q. State whether or not the precipitation in the month of June was more than the average?

A. Yes.

Q. Tell me from your records how many months of June between the years 1911 and 1936 had a greater precipitation than did June, 1939?

A. In two years up until and including 1936, that had a greater precipitation than June of 1939?

Q. Yes. I don't believe that I understood you.

A. There were two years up until and including 1936 that had a greater precipitation than June of 1939.

Q. What is the elevation, approximately, at your experiment station? A. About 2100 feet.

Q. Will you state, Mr. Knight, whether or not, in a mountainous region, such as the Pack River Valley, would there be a tendency to be heavier rain, and more sudden and more violent storms?

(Testimony of Ralph Knight.)

And would there be a greater tendency to hail and snow than there would be at your station?

A. According to the weather reports which we get from the [1018] state office, it appears that in the higher elevations, in a certain locality or vicinity, that is true. In other words, you will find your heavier rains,—your annual precipitation, for example, and your total will be higher and quite often you would have heavier local showers and rains.

Mr. Walker: May I get the answer, Mr. Nelson?

(Thereupon the answer of the witness was read aloud as above recorded.) [1019]

The Witness: May I have it re-stated?

(Thereupon the question referred to was read as follows: "And from your observation, and from the records which you have gone over, state whether or not, in your opinion, during the month of June, 1939, there would have been heavier rains and a greater precipitation in those areas of the Pack River Valley, particularly the Caribeu and the Hell Roaring Basin, than there would have been at your experiment station?") [1020]

A. That is a question that could not be answered "yes" or "no". I would say that it would be logical to assume that there would be, but so far as making a statement for a particular month, of course, I don't have it.

Q. (Mr. Hunt): Mr. Knight, can you state

(Testimony of Ralph Knight.)

whether or not, as the elevation increases in the mountains around here, whether the storms, the rains, and the hail have a tendency to be sharper, more sudden, more violent in higher elevations than in lower elevations?

Mr. Walker: I will object to that as repetition.

Trial Examiner *Hunt*: I thought that question was asked.

Mr. Hunt: First, I asked him if there would be a tendency to be more precipitation, and now I am asking him if there would be a tendency to more violence in the storms. In other words, if there would be one tenth of an inch scattered over 24 hours, or whether it would come right now.

A. I might answer that this way: I was checking over a bulletin by Christ, a former superintendent of the Experiment Station, the job which I now have. He went to some little length in the discussions of climate, and he said, in one of his statements, that as a whole, you would expect a heavier precipitation at higher elevations.

Q. All right, now, coming down to the violence of the storms of all kinds: would there be a tendency for them to be more violent and more sudden, and sharper? [1021]

A. I think I could answer that best by the records that come in. I know, on cross sections, when we have a light shower or a fairly good rain, we hear of heavy rains in other localities nearby.

Q. In the mountainous localities? A. Yes.

Q. What was Mr. Christ's full name?

(Testimony of Ralph Knight.)

A. J. H. Christ.

Q. By whom is Mr. Christ now employed?

A. He is now employed by the United States Department of Agriculture.

Q. In what capacity?

A. Regional Director of the Soil Conservation Service.

Q. And the bulletin reported was written by Mr. Christ?

A. Yes, I have the bulletin right there (indicating), in which that statement was made.

Mr. Hunt: That is all.

Cross Examination

By Mr. Walker:

Q. On occasions when there are rains in Caribou, might there not be rains at Sandpoint?

A. There might be.

Q. By the same token, might there be rain in Sandpoint when there might not be rain at Caribou?

A. That is very true, so far as I know.

Q. Mr. Knight, I call your attention to the testimony relative [1022] to the report of the State Office, concerning the higher elevations in certain locations.

A. Yes.

Q. Can you state what locations you referred to in the report from the State Office?

A. We have records from all over the State. We have weather observers in the State, and this was conducted by the State Weather Bureau.

(Testimony of Ralph Knight.)

Q. Were those reports peculiar to the Caribou Basin? A. No.

Q. I call your attention to the testimony about the average precipitation from 1911 to 1936, both inclusive, in which, during the month of June, there was greater precipitation on only two occasions than there was in June of 1939. Between the interval of 1936 and 1939, what was the situation?

A. You would like to have June for the following years?

Q. Yes.

A. In June, 1937, we had 3.65 inches of rainfall; in June of 1938, we had .84.

Q. Mr. Knight, have you been present when there was testimony given in relation to weather conditions in April and May of 1939?

A. Oh, that might have been touched on this afternoon while I was here; I have not been here very long.

Q. Can you describe what the precipitation record was for the [1023] month of May, 1939?

A. The total precipitation for May, 1939, was .57 inches; that is, here at Sandpoint at our station.

Trial Examiner Hektoen: .57?

The Witness: Yes.

Q. (Mr. Walker): Now, over a period of years, would the average precipitation,—strike that. Bearing in mind your testimony to the effect that rain may fall at Caribou and may not fall at Sandpoint, and also bearing in mind your testimony to the effect that rain may fall in Sandpoint and may not

(Testimony of Ralph Knight.)

fall in Caribou; over a period of years, would there be any appreciable difference in your record of the average rainfall at Sandpoint as compared with what would be the average rainfall at Caribou?

A. You say, would there be any appreciable difference in those two?

Q. Yes, any difference at all?

A. Over the rainfall at Sandpoint and what the average was at Caribou?

Q. Yes.

A. I would not be in a position to answer that, I am afraid.

Q. What will be the average rainfall in Sandpoint over the period of a year with respect to what would be the average rainfall in Caribou over the period of a year? Would that be substantially the same?

A. Well, we can assume that,—that is another thing that [1024] we will have to assume. We would expect it to be somewhat higher in Caribou; how much, we don't know. That is something that we cannot answer definitely.

Q. What is your opinion in that regard, sir?

A. I would say that, as I have already stated, we would normally expect the higher precipitation at the higher elevations.

Q. Now, let us go back to May, 1939. How many days of rainfall was there in the month of May, 1939?

A. If we left out those days in which there was only a trace of rain, that is, less than one-hundredth

(Testimony of Ralph Knight.)

of an inch, there were 9 days that had one-hundredth of an inch or more.

Q. When were the 9 days with respect to the first or the last day of the month?

A. Practically all of the rain, except for two hundredths came after the 16th of the month. There were two one-hundredths previous to the 16th, and the rest came after the 16th.

Q. How much did you say there was?

A. Total of .57; .57.

Q. .57? A. That is right.

Q. In a period of 24 hours, how constant must rain fall in order to constitute an inch of rainfall?

Mr Hunt: Will you read that question, please?

(Thereupon the pending question was read aloud as above [1025] recorded.)

Q. (Mr. Walker): Assuming that an inch of rainfall falls within a period of 24 hours, how constant and how concentrated must the rain be during that period?

A. Well, it is rather difficult to measure or set up your standard of concentration. In other words, you can have so many varying degrees.

Q. In order to have a trace of rainfall to be recorded, what type of rainfall is usually necessary, and what is it called?

A. We frequently get a few places that have a few spatters of rain or snow, which would constitute a trace, but still it is not enough to measure.

Q. And what is that commonly called? Is that an average drizzle?

(Testimony of Ralph Knight.)

A. I don't think that could be answered. That is a pretty hard question to answer. You mean as to amount?

Q. Yes.

A. As to the average drizzle, that is something I don't think can be answered.

Q. Mr. Knight, will you refer to May 24, 1939?

A. May 24?

Q. Yes. From that date to May 31, what were the precipitation measurements?

A. We had none on the 24th; none on the 25th; four one- [1026] hundredths on the 26th; a trace on the 28th; five one-hundredths on the 29th; and none on the following two days.

Q. Mr. Knight, can you give me what the average rainfall was for the month of July, 1939?

A. The total rainfall for July, 1939?

Q. Yes. A. It was .45; .45.

Q. What was the total rainfall for the month of April, 1939? A. .64.

Q. Now, what was the total rainfall for the month of April, 1938? A. April, 1938?

Q. Yes, that is right. A. 1.38.

Q. What was the total rainfall for the month of May, 1938? A. .89.

Q. And the total rainfall for the month of June, 1938? A. .84.

Q. And the total rainfall for the month of July, 1938? A. .52.

Q. And can you give us the total rainfall for the month of April, 1937?

(Testimony of Ralph Knight.)

A. April, 1937, was 3.36.

Q. And what was the total rainfall for the month of May, 1937? [1027] A. .52.

Q. What was the total rainfall for the month of June, 1937? A. 3.65.

Q. What was the total rainfall for the month of July, 1937? A. 1.19.

Mr. Walker: That is all.

Mr. Hunt: That is all, Mr. Knight. Thank you.

(Witness excused.)

Trial Examiner Hektoen: We will take a short recess.

(Thereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Hektoen: The hearing is in session.

Mr. Hunt: I will call Mr. Callahan.

PATRICK CALLAHAN

called as a witness by and on behalf of the Respondent F. D. Robinson, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hunt:

Q. Your name is Patrick Callahan?

A. Yes.

Q. Where do you reside?

(Testimony of Patrick Callahan.)

A. Sandpoint, Idaho.

Q. What is your occupation?

A. I am the fire and weather dispatcher at the Kaniksu National Forest. [1028]

Q. Now, where are the headquarters of the Kaniksu National Forest?

A. At Sandpoint, Idaho.

Q. Generally speaking, for the record, we are surrounded by the Kaniksu National Forest?

A. We are, practically.

Q. Some of the Kaniksu Forest is east; some of the Kaniksu Forest is west, and some south and some north? A. Yes.

Q. State whether or not, Mr. Callahan, as a part of your duties, it is a part of your duties to collect data concerning precipitation, storms, and so forth? A. Yes.

Q. And you are the custodian of those records?

A. Yes.

Q. At my request, have you made a statement showing the precipitation for the months of May and June, 1939? A. I have.

Q. Do you have it with you? A. Yes.

Q. Does the record that you made also include the precipitation for the month of April, 1939?

A. It does.

(Thereupon a document was marked as Respondents' Exhibit No. 9 for identification.)

[1029]

Q. (Mr. Hunt): Now, where were these rec-

(Testimony of Patrick Callahan.)

ords taken from? Where were they taken upon the Kaniksu Forest?

A. Those particular records were taken north of the Priest River horizon.

Q. Approximately how far is this experiment station from what is known as the Caribou Basin?

A. Between 11 and 13 miles south and west.

Q. Glancing at the exhibit which you have described, being marked as Respondents' exhibit No. 9, will you tell me what the precipitation was for the month of April, 1939?

A. By the days?

Q. Just the total. A. .61.

Q. Could you tell me what the precipitation was for the month of May, 1939?

A. .82. These are excluding traces.

Q. Excluding traces? A. That is right.

Q. Coming down to the month of June, will you read the precipitation, day by day, starting from June 1st up to, let us say, June 10?

A. June 1, 1939, .02.

Q. Just a minute.

A. On the first, .02; on the third, .03; on the fourth, .02; on the fifth, .01; on the sixth, .07; on the seventh, [1030] .18; on the eighth, .11; on the ninth, .11; on the 10th, .20; on the 11th, .12; on the 12th, .04; on the 13th, .01.

Q. State whether or not, according to your records, for the month of June, the 14th day of June was the first day of that month when you didn't have a record of any rain?

(Testimony of Patrick Callahan.)

A. No, sir; the second.

Q. There was none on the second, and then you didn't skip a day until the 14th; is that correct?

A. Yes.

Q. What was the total precipitation for the month of June, according to your records?

A. 2.96.

Q. Now, Mr. Callahan, do you have with you the records of the Forest Service showing the precipitation in this area for several years last past?

A. I have the records from this station for several years last past.

Q. Will you refer to them, please? How far back do these records go?

A. July,—they go back to January of 1912.

Q. Now, will you look at that record and tell us how many months of June since 1912 have had more precipitation than the month of June, 1939?

A. 1913, 1916, 1937,—correction. I might add 1927.

Q. What is the elevation at which those readings were taken? [1031]

A. Approximately 2400 feet.

Q. Approximately 2400?

A. 2368 is the elevation given here.

Q. I didn't get it? A. 2368.

Q. The elevation at Sandpoint is what?

A. 2050 feet.

Q. 2050 feet? A. Yes.

Q. Now, Mr. Callahan, in the course of your

(Testimony of Patrick Callahan.)

employment, have you had occasion to study storm areas in this particular vicinity?

A. Yes, I have.

Q. Have you brought with you certain original records of your office which show the tendency of storms in the vicinity of Caribou Basin?

A. I have a record of the storms which occurred in June of 1939. That was in the Shiloh District.

Q. And the Shiloh District is where in relation to the Caribou Basin?

A. It is adjacent to Caribou Basin. Caribou Basin is on the south and west extremity of the Shiloh District.

Q. Do you have those records with you?

A. Yes.

Q. May I have them? [1032]

A. Certainly. (Handing document to counsel.)

(Thereupon the document hereinabove referred to was marked as Respondents' exhibit 10 for identification.)

Q. (Mr. Hunt): Is it a part of your duties, or a part of the duties of the lookout man to plot the various storms that hit their vicinity during the season?

A. They are supposed to record the strike,—where the lightning strikes to the ground.

Q. Do they also record the course of the storms which occur there, or which cross there?

A. There are certain of them in each district which do.

(Testimony of Patrick Callahan.)

Q. And this record, respondents' exhibit No. 10, that is a record of storms?

A. That is the record built by the dispatcher at Shiloh.

Q. I will ask you, Mr. Callahan, to take respondents' exhibit No. 10 and slowly explain the meanings of the diagrams on each page of exhibit 10.

A. On June 13, 1939, the dispatcher at Shiloh reported to the supervisor that a storm had entered the district from the southwest at 12:04 p.m.,—had entered the district just west of Jeru, moving north and slightly east across McCormick, splitting, and a part of the storm was moving directly east to Black Mountain, and a remnant moving north and east across Caribou,—which is a different Caribou, by the way, if we can differentiate here.

[1033]

That was the storm of that date, and the dispatcher reported this as a part of the information that was compiled from the various maps; this concerns only the Shiloh District. He also shows that on the same day, at 11:30 in the morning, the storm entered the district south of Jeru, moving north and east, and going off the district across to Black Mountain.

On June 24, according to the information he submitted, a storm built up at Jeru Peak, starting at 3:30 p.m., and he labelled it "lightning", showing that it started at 3:30 p.m. at Pack River. This moved across, and was shown as stopping at 3:50

(Testimony of Patrick Callahan.)

p.m. at the Great Northern Railway. By starting and stopping, these times are the time of the first strike going to the ground, and the time of the last strike hitting the ground.

On June 29, he plots a storm as moving north and slightly east over Jeru and continuing across the district, moving off north and east.

Q. How far is Jeru Peak from Caribou Basin?

A. Approximately,—I would guess. and it is purely a guess,—I would say that it is 7 or 8 miles. I don't know exactly where the logging operation is.

Q. How far would it be from the headwaters of the Hell Roaring Creek?

A. Jeru Peak is on the Divide between Jeru and McCormick Creek,—I beg your pardon on that. I am not familiar with those [1034] creeks enough to know the creek north and south, but, as I remember, Jeru Peak is immediately north of Hell Roaring Creek. That is, immediately north of Hell Roaring Creek Basin.

Q. Mr. Callahan, will you state whether or not this vicinity of Caribou Basin is generally regarded as a storm area?

A. I regard it as such. I have been watching it since 1929, and the storms coming across this area, not always, but usually, fall between Blue Mountain on the south and up to what they call Mt. Roothenau on the north.

Q. State whether or not it is usual to have heavy and violent rain storms in that vicinity?

(Testimony of Patrick Callahan.)

A. Storms would not have to be called electrical storms. The amount of rain depends on the kind of storms, and the severity of the storms.

Q. What I am getting at, are we apt to have more sudden and more violent downpours at your station than at the experiment station?

A. No, sir.

Q. Are you apt to have more violent rainfall and more sudden rainfall at the higher than at the lower elevations?

A. Yes, that is generally true.

Q. Would you state what would be your opinion as to which place had the greater precipitation in July of 1939, at the Caribou Basin, or at the experiment station?

A. I lack records of the area, Mr. Hunt, but I speak of it [1035] as being wet. We have no necessity for lookouts south; and, lacking records, I would like to say that that area through Jeru Peak has slightly more rains than the records at the experiment station.

Q. Would you state whether,—strike that. You stated that you didn't put a lookout south in the month of June, 1939?

A. I said that we had none there.

Q. Why?

A. All the lookouts were put out earlier in the year, and they went out in the last part of the month. The amount of rain and the fogginess was such that there was no necessity for the lookouts

(Testimony of Patrick Callahan.)

being out there, except in the areas that did not receive this rain.

Q. In other words, the month of June, 1939 was so wet that the danger of fire did not exist in any material degree?

A. It existed in some localities; we had lookouts in some areas.

Q. But not in the vicinity of the Caribou Basin? A. No.

Q. Mr. Callahan, I neglected to ask you, when you were referring to your records a minute ago, whether the average rainfall for the month of June was available. Do you have it with you?

A. You mean for all years?

Q. Yes. [1036]

A. Our records are averaged only through 1931.

Q. From what date?

A. 1912, and the average is 1.78.

Q. 1.78? A. Yes.

Q. What was it last year?

A. From 1912 to 1931, inclusive.

Q. Oh, the last year was 1931, where you have the averages? A. Yes.

Q. And the average is 1.78?

A. That is right.

Q. Mr. Callahan, you have indicated on each one of the sheets marked as Respondents' exhibit No. 10, by an egg-shaped circle,—

A. (Interposing) That is right. That is an ellipsoid.

(Testimony of Patrick Callahan.)

Q. You have indicated on each page of Respondents' exhibit No. 10, an ellipsoid showing the general location of what we have been discussing as the Caribou Basin; is that correct?

A. That is correct.

Q. That is shown on each page? A. Yes.

Mr. Hunt: We offer respondents' exhibits 9 and 10 in evidence, and ask permission to withdraw Respondents' exhibit No. 10, for the purpose of having Mr. Callahan make a copy of it, and we will return the copy tomorrow. I think that we can agree that that will be done. [1037]

Mr. Walker: That is all right.

Trial Examiner Hektoen: Is there any objection?

Mr. Walker: Just a moment. No, I have no objections.

Trial Examiner Hektoen: Respondents' exhibits 9 and 10 will be admitted; and a copy may be made of respondents' exhibit 10, after which the original may be withdrawn.

The Witness: Do I have to return the original?

Mr. Hunt: You make a compared copy and deliver it to my office, if you will.

Trial Examiner Hektoen: Are you the custodian of those records?

The Witness: Yes, I am responsible for those records.

Trial Examiner Hektoen: Are you the draftsman of the original?

The Witness: No.

(Testimony of Patrick Callahan.)

Trial Examiner Hektoen: You can also reproduce them?

The Witness: Yes.

Trial Examiner Hektoen: Very well.

(Thereupon the documents heretofore marked as Respondents' exhibits 9 and 10 for identification were received in evidence.)

RESPONDENTS' EXHIBIT No. 9

Experiment St. Priest River, Idaho

April

1939

8.....	.04
9.....	.06
12.....	.39
13.....	.03
22.....	T
24.....	.06
25.....	.03
29.....	T

.61

May

1939

4.....	.04
5.....	T
6.....	T
7.....	T
16.....	.01
17.....	.23
19.....	.06
20.....	.01
21.....	T
22.....	.33
23.....	.14
24.....	T
28.....	T
29.....	T

.82

(Testimony of Patrick Callahan.)

June
1939

1.....	.02
3.....	.03
4.....	.01
5.....	.02
6.....	.07
7.....	.18
8.....	.11
9.....	.13
10.....	.20
11.....	.13
12.....	.04
13.....	.01
15.....	.18
16.....	.15
17.....	.41
18.....	.25
19.....	T
20.....	.68
21.....	T
23.....	.08
24.....	.20
25.....	.03
26.....	T
30.....	.10
<hr/>	
	2.96

Mr. Hunt: That is all.

Cross Examination

By Mr. Walker:

Q. Mr. Callahan, referring to what has been marked as respondents' exhibit No. 9, the "T" indicates what? A. A trace. [1038]

Q. The days of the month which are not recorded indicate what?

(Testimony of Patrick Callahan.)

A. Absence of rain, or a trace.

Q. Does it necessarily follow that the storms which have been recorded on Respondents' exhibit No. 10 have a relationship to the amount of rain falling on the days on which the storms are recorded?

A. With respect to what area? You mean within the storm area itself?

Q. With respect to your record?

A. These records are outside of the area.

Q. Outside of the path of the storm?

A. The approximate location would be out in the area from where the measurements are taken; and if you are asking me the relationship between these measurements and the path of the storm,—

Mr. Walker: For the record, when the witness said "out in the area from where the measurements are taken", he indicated a point off the paper.

Q. (Mr. Walker) Now, Mr. Callahan, is it true that it may rain at Caribou when it does not rain at the experiment station? A. It may.

Q. And it may rain at the experiment station when it does not rain at Caribou?

A. It is not so usual for it not to rain at the experiment station and then not rain later at the Caribou as it would for [1039] it to rain first at the Caribou and not rain at the experiment station.

Q. How do you account for that?

A. The prevailing winds in the storm path are from the southwest, and any storms passing over the experiment station would follow across in the

(Testimony of Patrick Callahan.)

direction of the northeast, and consequently, go across Jeru Peak.

Q. Did I understand you to testify that the presence of lightning does or does not have a relationship to the presence of precipitation?

A. I don't think that I testified to that.

Q. What is your answer?

A. Not necessarily.

Q. Have you a record of the amount of clear days during any of the periods for which you have made a record as to precipitation?

A. I have the records, not in my possession, because they have been forwarded to Missoula.

Q. The Forest Service does also maintain a record of the days of sunshine?

A. The number of hours of Sunshine.

Q. Could you obtain that, you think?

A. I would have to get permission from the experiment station at Missoula; and they might, or they might not. They would probably give you the information from those reports, but they [1040] will probably not submit the records.

Q. Would they supply the information to you?

A. They would give me the number of hours, or the number of days.

Q. How long would it take you to obtain that?

A. At this time of the year, they are terribly busy; you could probably get it in a week.

Q. How long? A. Within a week.

Q. Do I understand that the diagram set out

(Testimony of Patrick Callahan.)

in respondents' exhibit No. 10 indicates where the storm originates and the path of the storm?

A. No, sir; not necessarily. It is one of the things that help to indicate the origin of the storm; it indicates that it might have gone on through the district at the point indicated below.

Q. Were those only the days in the month of June when storms were recorded at the place where the recordings were made?

A. Electrical storms?

Q. Well, is that what was recorded?

A. That is what was recorded; lightning storms.

Q. Only lightning?

A. That is true. The lightning storms traversing and going across that district in those days.

Q. Were those the only lightning storms for which recordings [1041] were made in the month of June?

A. Those are the only ones submitted to me.

Q. If there were others, they would have been submitted to you, would they not?

A. They should have been.

Mr. Walker: That is all.

Mr. Hunt: That is all.

(Witness excused.) [1042]

GEORGE F. DUNN

called as a witness by and on behalf of the Respondent F. D. Robinson, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hunt:

Q. State your name, please?

A. Mr. George F. Dunn.

Q. Where do you reside, Mr. Dunn?

A. 425 Michigan Street.

Q. Sandpoint, Idaho? A. Sandpoint.

Q. How long have you resided in Sandpoint?

A. About 17 years.

Q. During that time, by whom have you been employed?

A. The Humbird Lumber Company.

Q. And in what capacity?

A. As a timber cruiser.

Q. During 1939, were you familiar with what is generally known as the operations of Frank D. Robinson in the Caribou Basin in this county?

A. Approximately, yes. [1047]

Q. And did you have occasion in 1939 to visit that operation? A. Yes.

Q. Many times? A. Yes.

Q. Will you state how you happened to have occasion to visit this operation?

A. I received orders from the General Manager of the Humbird Lumber Company.

Q. Who is the general manager?

A. Mr. Ole Pearson.

(Testimony of George F. Dunn.)

Q. Let us specifically come down to the spring of 1939, and particularly during the first week of June, 1939. Did you have occasion then to go up to Mr. Robinson's camp on several occasions?

A. Yes.

Q. I will ask you, Mr. Dunn, approximately how much timber was cut, and lying in the woods or decked at that camp? How much White Pine?

A. Oh, there was,—I have forgotten now,—in the neighborhood of 800,000, I should say.

Q. And some mixed? A. Yes.

Q. Cedar poles? A. Yes.

Q. Now, did Mr. Pearson order you to go up there on several [1048] occasions around the first week of June? A. Yes, sir.

Q. And what were his instructions to you?

A. As to the general operations, and so on?

Q. Yes.

A. If they could move timber at that time, to see about it.

Q. Let us stop right there. Your instructions, among others, from Mr. Ole Pearson, the superintendent of the Humbird Lumber Company, was to go to Mr. Robinson's camp to ascertain whether they could move any timber at that time?

A. Yes.

Q. Now, state whether or not during the first week in June, 1939, it was feasible or practical for Robinson to attempt to truck logs in his operations at the Caribou Basin?

A. It was a very rainy period, and all the roads

(Testimony of George F. Dunn.)

leading to the timber were impassable at that time.

Q. What road was that? Was that the main road?

A. The main road could be driven over.

Q. Where were the logs at? Were they on the main roads or the side roads?

A. There wasn't any timber on the main roads.

Q. That is, cut?

A. None cut, no, sir.

Q. And did you report to Mr. Pearson that Robinson could not truck logs out of there at that time? [1049]

A. Yes.

Q. Now, Mr. Dunn, in your employment as cruiser for the Humbird Lumber Company in 1939, and particularly in the spring of 1939, state whether or not it was a part of your duties to check up on the sawyers working for Robinson?

A. Yes, sir.

Q. And did you check up on them?

A. Yes.

Q. Now, in checking up on the work that the sawyers were doing, what particular thing did you do?

A. It was my duty to see that the timber was felled properly, the logs cut the proper length according to the contract, and to see that the timber was not broken up, to see that the ground was cleaned, and to look after the timber of the corporation.

Q. By the way, who owned the real estate and the timber on it?

(Testimony of George F. Dunn.)

A. The Long Lake Lumber Company.

Q. I mean, before the timber was cut, who owned it?

A. The Humbird Lumber Company.

Q. And do you know whether or not the Humbird Lumber Company was selling it to the Long Lake Lumber Company? A. Yes.

Q. And after the timber was cut, it became the property of the Long Lake Lumber Company?
[1050]

A. Absolutely.

Q. And did you have, in your capacity as inspector of the sawyers, opportunity to determine whether or not the sawyers were cutting the stumps at the proper lengths? A. Yes.

Q. Why was that done?

A. Oh, I made complaints in the latter part part of,——

Q. Pardon me, we are getting ahead of the story. What difference does it make how the stump is cut?

A. It has to be cut according to the contract.

Q. Yes, I know.

A. And it has to be cut without waste.

Q. And if the stumps are cut too high, what happens?

A. It is a waste and a loss to the company.

Q. And did you check upon the sawyers to determine how high the stumps were cut?

A. That was one of my duties.

(Testimony of George F. Dunn.)

Q. Did the sawyers have instructions as to what height to cut the trees?

A. Yes; they had received instructions at the office. [1051]

ARDEN DAVIS

previously sworn, was called as a witness by and on behalf of the Respondent Robinson, and further testified as follows:

Trial Examiner Hektoen: You have been previously sworn in this proceeding and have previously testified?

The Witness: Yes.

Direct Examination

By Mr. Hunt:

Q. Will you state your name?

A. Arden Davis.

Q. You are the same Arden Davis who has testified on at least two occasions heretofore in this hearing?

A. Yes. [1055]

Q. Where do you reside? A. Sandpoint.

Q. How long have you lived here?

A. 7 years.

Q. How long have you known Frank Robinson?

A. 7 years.

Q. Were you employed by Robinson 7 years ago?

A. Yes.

Q. In what capacity?

A. I was driving team first.

(Testimony of Arden Davis.)

Q. How long did you drive team for him?

A. From July until October.

Q. What year? A. 1933.

Q. What happened to you then?

A. I got my leg broke.

Q. And then after your leg began to heal, what did you do? A. I went to work in the office.

Q. For Robinson? A. Yes.

Q. And you have been in charge of the office for how long? Did you take charge of the office right away?

A. Yes, since February, 1934.

Q. And ever since that time, in February of 1934, you have been in charge of the office and have kept the books for [1056] Frank Robinson?

A. Yes.

Q. What was Mr. Robinson doing in the year 1939 in the Caribou Basin? A. Logging.

Q. Who for?

A. Well, he was a logging contractor, logging for the Long Lake Lumber Company.

Q. Who owns the equipment that is used in the logging operation? A. Mr. Robinson.

Q. Are you acquainted with James Brown, Jr.?

A. Yes.

Q. Has he been around the camp more or less the past few years? A. Yes.

Q. In your employment, in keeping the books for Mr. Robinson, do you have a record as to when the men go to work, when they work, and when they leave the operation? A. Yes.

(Testimony of Arden Davis.)

Q. When a man leaves the work, whether he quits or is discharged, who informs you of that fact? A. He does.

Q. Who?

A. Either the man, or Mr. Robinson. [1057]

Q. Did Mr. James Brown, Jr. ever instruct you to pay off any man at your camp? A. Never.

Q. Now, there has been more or less testimony up to now in this hearing, relative to certain Humbird Lumber Company men, and certain Long Lake Lumber Company men who came to that camp. Did men from the Humbird Lumber Company come to your camp from time to time? A. Yes.

Q. For what purpose?

A. Looking after the Humbird Lumber Company interests.

Q. What were the Humbird Lumber Company interests in that camp?

A. Well, they owned the real estate and the timber before it was cut.

Q. And who were they selling it to?

A. Long Lake Lumber Company.

Q. On a stumpage basis? A. Yes.

Q. At the present time, and during 1939, state whether or not the greater proportion of this tract of timber was still standing? A. Yes, it was.

Q. What I am getting at, in the operations of Mr. Robinson, has he, or has he not, cut the greater proportion of the timber- [1058] land, the timber from which is being sold to the Long Lake Lumber Company?

(Testimony of Arden Davis.)

A. You mean the greater part has been cut?

Q. In 1939, was the greater proportion of the timber still standing, or had the greater proportion of it been cut? A. Yes.

Q. And as long as it is still standing, it is the property of the Humbird Lumber Company?

A. Yes.

Q. After the trees are felled and cut into logs, it becomes the property of the Long Lake Lumber Company?

A. After they are landed at the railroad.

Q. Who were some of the Humbird Lumber Company men that came up there? I don't mean by name, but in what capacity?

A. Their cruiser came up there.

Q. What did the cruiser do up there?

A. He checked up in the woods to see how much wood was down, about the clean-up, and where they skidded and cleaned up the logs.

Q. Why is it necessary to clean up?

A. They want to get the most value out of the timber, and for fire hazard, they don't want the timber scattered all over.

Q. And they didn't want any logs left in the woods after the logging in that particular vicinity had stopped; is that correct? [1059]

A. That is correct.

Q. Is it kind of customary for a gypo to leave some logs back in the corners?

A. If they are hard to cut, it is customary to leave a few, if you can get by with it.

(Testimony of Arden Davis.)

Q. If you can get by with it? A. Yes.

Q. And they checked up to see that the logs that had been fallen, had been skidded out?

A. That is right.

Q. Now, did the Long Lake Lumber Company have any man in there at any time that would check up on the Robinson job? A. Yes.

Q. What did those men do?

A. Well, they went over the whole territory the same as the Humbird Lumber Company man; they usually went with him.

Q. Lots of times they were together?

A. Yes.

Q. And their interests, you might say, were practically identical? A. Practically.

Mr. Walker: I will object to the testimony, because the interests are defined in the agreement; that is the best evidence.

Trial Examiner Hektoen: Well, the answer is already in. [1060] I don't think it makes any difference.

Q. (Mr. Hunt): Now, at the end of the season's operation, what did you do concerning the books of Robinson? A. What do you mean?

Q. Your books in that operation? What did you usually do around the end of the season?

A. Well, we closed them.

Q. And after the books were closed, did you have a reconciliation of your books with the books of the Long Lake Lumber Company? A. Yes.

(Testimony of Arden Davis.)

Q. Now, how many times did you do that?

A. Once a year.

Q. And did the Long Lake Lumber Company close their books so far as your operations were concerned?

A. What do you mean?

Q. I don't mean to close them, but did they have a reconciliation, also?

A. Yes, so far as our office was concerned.

Q. That happened how often?

A. Once a year.

Q. Usually, what month was that?

A. Usually in January of the following year.

Q. What did that amount to, briefly? What did it consist of?

A. Well, it was a reconciliation. In other words, the statement after I closed my books might not have been in accord [1061] with the statement of the Long Lake Lumber Company pertaining to the F. D. Robinson account.

Q. And you reconciled your books with their books to see if you were in balance?

A. Yes.

Q. I will ask you whether or not at any time any officials of the Long Lake Lumber Company ever inspected the books of Frank Robinson?

A. Never.

Q. But you did have a reconciliation in order to see if your accounts were agreed upon by the Long Lake Lumber Company and by Mr. Robinson?

A. Yes.

Q. In other words, you got together on the balances?

A. Yes.

(Testimony of Arden Davis.)

Q. Now, in your employment with Robinson, did you have occasion to advertise some of his horses for sale? A. Yes.

Q. And where were those advertisements carried? A. In the local paper.

Q. Could you name them?

A. The Northern Idaho News, and the Daily Bulletin.

Q. And when did you first start advertising those horses for sale?

A. We ran an ad in 1938, and I think that we ran one in the [1062] winter of 1937 and 1938.

Q. Did you sell some of the horses in 1938?

A. Yes.

Q. And did you sell some in 1939?

A. Yes.

Q. State, if you know, the reason for the sale of these horses?

A. Mr. Robinson is replacing them with power equipment.

Q. After the horses were replaced with power equipment, horses were not used, or were not necessary in the operation? A. That is right.

Q. You still have some horses?

A. We still have some.

Q. And they are for sale to anybody who wants them? A. Yes.

Q. Now, Mr. Davis, there has been a little testimony here relative to some conversation between the Camp Committee and Mr. Robinson relative to several things; relative to cleaning the blankets,

(Testimony of Arden Davis.)

—clean blankets,—in the spring of 1939, or clean sheets. A. Yes.

Q. Did they have sheets available then in June of 1939?

A. Yes; I am not sure whether they were all there or not.

Q. Was there enough there to take care of the needs of the men in camp? [1063] A. Yes.

Q. If the men wanted clean sheets, what did they do?

A. They usually came to the office and asked for them.

Q. And could they get them? A. Yes.

Q. What was the condition of your showers in June of 1939?

A. Well, we didn't have any time,—that is, they were not working.

Q. Had you had them the year before?

A. Yes.

Q. And had you had clean sheets the year before at all times? A. Yes.

Q. Why weren't the showers working in June of 1939?

A. Well, they froze during the winter; the coil in the boiler was froze.

Q. It burst? A. Yes.

Q. And it had to be replaced? A. Yes.

Q. And the reason why, in the first week in June, the showers were not running was what?

A. We had not repaired them yet.

Q. Will you tell us the duties of a bull cook?

(Testimony of Arden Davis.)

A. Well, he is a fellow that gets kind of the dirty end of it.

Q. He is the most important man in camp?

[1064]

A. Yes. He gets wood for the cook house or the bunk house; sweeps out the bunk house,—

Q. Now, during all of the years of your operation, have you had a bull cook up there?

A. Yes.

Q. Did you have a bull cook in the spring of 1939?

A. Yes.

Q. What about the lights in camp in the first week of June in 1939?

A. They were not working.

Q. Why not?

A. They had not been repaired.

Q. Now, how long had the camp been running the first week in June?

A. We had a few men in there in April.

Q. But your camp had not really gotten to going, is that right?

A. We had just what you would call a cedar camp,—a pole camp.

Q. Did you have lights there in 1938?

A. Yes.

Q. You had them in 1939?

A. Yes, after they were repaired.

Q. You have a local power plant there?

A. Yes. [1065]

Q. What does it consist of?

(Testimony of Arden Davis.)

A. It consists of a Model A Motor and a Generator.

Q. In other words, you generate your own power for the plant? A. Yes.

Q. And during the first week in June you had not gotten your motor and generator tied up?

A. That is right.

Q. But it was, later on? A. Yes.

Q. Now, there has been more or less testimony relative to the construction by Mr. Robinson of a dam and flowage at Colburn Creek. Who built that dam? A. Mr. Robinson.

Q. Under what arrangement?

A. That he should be reimbursed by the Long Lake Lumber Company for all expenditures.

Q. Did Mr. Robinson use some of his equipment on that? A. Yes.

Q. Was he paid for that? A. Yes.

Q. And did you run that through your books?

A. Yes.

Q. And was Mr. Robinson paid for the work that he did on that? A. Yes. [1066]

Q. Now, Mr. Davis, you were in camp practically every day during the first week of June, were you not? A. Yes.

Q. And made various trips to Sandpoint back and forth? A. Yes.

Q. What kind of weather did you have the first week in June? What were the conditions so far as rain was concerned?

(Testimony of Arden Davis.)

Trial Examiner Hektoen: Let us stipulate it was very rainy.

Mr. Hunt: Well, nobody has stipulated; we have not been able to get any stipulation.

Trial Examiner Hektoen: So far as this man's testimony is concerned?

Q. (Mr. Hunt): Did you testify yesterday as to the weather the first week in June?

Mr. Walker: I don't think anybody contends it was not rainy.

Trial Examiner Hektoen: I am sorry. Go ahead.

Q. (Mr. Hunt, continuing): State what the weather was at the camp the first week in June, 1939?

A. The first day or two was fair, and then it rained, and then it started raining the latter part of the week.

Mr. Walker: I didn't get the latter part of the answer.

(Thereupon the answer of the witness was read as above recorded.)

Q. (Mr. Hunt, continuing): Particularly during the 6th or 7th of June, what was the situation as to rain those days? [1067]

A. It rained.

Q. Now, Mr. Davis, your work did not confine you to the office, did it?

A. No.

Q. You were timekeeper, and went around the woods, and were required to know what went on in the entire operation, is that correct?

A. Yes.

Q. State whether or not it was practical to truck

(Testimony of Arden Davis.)

logs during the first week in June in Mr. Robinson's operation? A. It was not.

Q. Why? A. The roads were too wet.

Q. How much timber did Mr. Robinson have down, either unskidded in the woods, or on skidways, when the camp opened up in the spring of 1939?

A. 2,700,000-and some odd feet. I have forgotten the exact amount.

Q. Now, in the first week of June,—strike that. On the 6th day of June, 1939, approximately how many cedar poles were lying the woods?

A. 5009 poles.

Q. 5000 and how many feet?

A. Five thousand and nine poles.

Q. State whether or not at that time the making of cedar poles [1068] in the camp had been completed? A. Yes, it had.

Q. Is it customary to make cedar poles before you cut the white pine or not? A. No.

Q. From what land are the cedar poles cut?

A. The logged off land.

Q. And had Robinson in the first week of June, 1939, completed the cutting of all the poles remaining on the logged off land in his operation?

A. Yes.

Q. State how the camp opens up in the spring, and particularly with relation to the number of employes who go to work in the first few weeks, and the rapidity with which employes are put to work in the spring.

(Testimony of Arden Davis.)

A. Well, he generally tries to get in there as early as possible with a few men.

Q. All right. What do these few men do first?

A. Repair the roads.

Q. And then who goes to work?

A. You mean right from the start?

Q. Yes. How do the groups come in? Who comes in first?

A. The road crew comes in there first.

Q. All right, go on.

A. And then the few cedar men, and as the snow goes off, and when the snow gets down to the stump height,—the snow does [1069] not go off all at once,—he places a crew up there, enough necessary to cut the poles for that year, and then the pole skidders come. The last thing we do in there, before the polemakers are through, the poles are all made up, and then that crew is laid off. It depends on the weather and everything; and he starts logging just after that, as soon as possible.

Q. But you cannot take a whole crew in there and start in right now, start general operations in the spring? A. No.

Q. When is the peak of the employment? When are you hitting the ball the hardest?

A. August has been the peak.

Q. Well, then in August, the camp is in full swing? A. That is right.

Q. That is what was done in the year 1939?

A. Yes.

(Testimony of Arden Davis.)

Q. Were you in the court room when Mr. Leon Wise testified as to the conversation that he had with Mr. Robinson at the camp, in which he testified about going into the office and Robinson locking the door? A. Yes.

Q. Did you hear that testimony?

A. Yes, I heard that.

Q. Were you present at that time? [1070]

A. I was in the office.

Q. You saw what took place? A. Yes.

Q. State whether or not Mr. Robinson locked the door and put the key in his pocket?

A. He did not.

Q. Is there a key on that door from the inside?

A. No.

Q. What kind of a lock is it?

A. A Yale lock.

Q. What kind of a catch or lock does it have on the inside?

A. I guess you would call it a tongue; I don't know what you would call it. [1071]

Q. Did you hear the conversation between Mr. Wise and Mr. Robinson at that time?

A. Yes.

Q. I will ask you whether or not at that time, in the presence of yourself and Mr. Leon Wise, Mr. Robinson told Mr. Wise he would fire him and every other one working with him who had signed up "in your union," or words to that effect?

A. I can't remember that being said.

(Testimony of Arden Davis.)

Q. State whether or not at that time Mr. Robinson stated that he intended to shut the camp down as the result of union activities?

A. Not that I recall.

Q. Mr. Davis, do you remember when a jammer broke down, and the crew of that jammer were paid off, on or about June 6? A. Yes. [1073]

Q. What happened relative to that jammer?

A. Well, I paid the crew off.

Q. Did the jammer break down, to your knowledge? A. Yes, it broke down.

Q. And you paid off the crew? A. Yes.

Q. Was that jammer subsequently repaired?

A. Yes, it was.

Q. When was it ready to go into operation again?

A. I don't just remember the date; it was two or three weeks.

Q. Now, had the cedarmakers in Mr. Robinson's camp completed all their work on June 6?

A. The makers?

Q. Yes. A. Yes.

Q. Mr. Davis, on the 29th of June, there was a meeting in the office of Mr. Robinson, in the J & L Building, in which Robinson, yourself, myself, Mr. Roll, and Mr. Johnson and others were present? Do you remember that meeting? A. Yes.

Q. Now, state whether or not an agreement was entered into by and between all concerned at that time to hold an election under the auspices of the National Labor Relations Board on July 6th? [1074]

(Testimony of Arden Davis.)

A. There was.

Q. State whether or not Mr. Roll and I left that meeting and went over to my office?

A. Yes.

Q. Did you come to my office later?

A. Yes, I did.

Q. Were you in the office at the time that Mr. Herbert Johnson came in?

A. I don't believe I was; I came in,——

Q. Let us put it this way: were you there when Johnson came back?

A. Yes, I was there when he came back.

Q. State what was said, after Johnson came back in.

A. As I remember it, Mr. Roll did most of the talking. And he came in and said, "I guess there won't be any election."

Q. What did Mr. Roll do then?

A. He put all of his stuff in his brief case and left.

Q. And was there an election held?

A. No. [1075]

Q. (Mr. Hunt, continuing) Now, Mr. Davis, how did you requisition funds from the Long Lake Lumber Company? You requisitioned funds from the Long Lake Lumber Company from time to time, when you needed them? [1077]

A. Yes.

Q. How did you do that?

A. By letter, or by phone.

Q. Did you have any regular periods during any months when remittances were made by the

(Testimony of Arden Davis.)

Long Lake Lumber Company to the Bonner County National Bank for Robinson's credit?

A. No.

Q. What did you do when you needed money?

A. We called up and asked for it.

Q. And did you get it? A. Yes.

Q. Were there any regular agreed upon times when requisitions could be made? A. No.

Q. When you needed money, you made a request, or a requisition, and you got it?

A. Yes.

Q. Do you have a requisition with you?

A. Yes.

Trial Examiner Hektoen: There will be a recess for ten minutes.

(Thereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Hektoen: Proceed, Mr. Hunt.

Q. (Mr. Hunt, continuing) Mr. Davis, did you from time to time [1078] make requisitions upon the Long Lake Lumber Company? A. Yes.

Q. For what purpose, generally?

A. Orders; orders to pay.

Q. Orders to pay?

A. And also orders for some parts.

Q. And did the Long Lake Lumber Company in pursuance of these requisitions pay some bills for Robinson? A. Yes.

Q. And did you have a form book for making requisitions? A. Yes.

(Testimony of Arden Davis.)

Q. And there has been some testimony, Mr. Davis, relative to the fact that on or about the 23rd of December, 1938, a check was paid by the Long Lake Lumber Company, payable to C. J. Gooby in the sum of \$735.94. Was such a requisition made?

A. Yes.

Q. Why?

A. Well, the requisition was to pay him off.

Q. Why did you make a requisition to the Long Lake Lumber Company to pay this amount of money to Mr. Gooby; what was it for?

A. We didn't have the money in the bank.

Q. What did Mr. Gooby do to earn that money?

A. He worked out there loading logs. [1079]

Q. Where? A. At the landing.

Q. At Samuels? A. Yes.

Q. Was that during the month of December, 1938? A. No, that was during October.

Q. State whether or not it was a clean-up of the loading for that year?

A. Yes; the pine was settled for the year.

Q. Handing you a requisition book, and particularly sheet 1954, I will ask you if that is the requisition that you have been referring to?

A. Yes; that is a carbon copy.

Q. This is a carbon copy? A. Yes.

Q. Where did the original go?

A. It went to the Long Lake Lumber Company.

Q. And you kept a copy? A. Yes.

Q. And they retained the original?

(Testimony of Arden Davis.)

A. Yes.

Q. Is this your signature on the corner (indicating)?

A. Yes, it is.

(Thereupon a document was marked as Respondents' exhibit No. 12 for identification.)

[1080]

Mr. Hunt: We offer this in evidence.

Mr. Walker: No objection.

Trial Examiner Hektoen: It may be admitted.

(Thereupon the document heretofore marked Respondents' exhibit 12 for identification was received in evidence.)

RESPONDENTS' EXHIBIT No. 12

F. D. ROBINSON
Sandpoint, Idaho

No. 1954

Date—Dec. 23, 1938

To—Long Lake Lumber Co.

Address—348 N. Wall St.

Gentlemen: Please enter our order for the articles listed below, subject to Instructions hereon.

Ship to—

Via—C. J. Gooby. Wanted—

Show above Requisition Number on all Invoices.

Quantity	Number	Description	Price
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Long Lake Lumber Co.

348 N. Wall St.

Please pay to the order of C. J. Gooby (\$735.94) seven hundred thirty-five and 94/100 dollars. Charge same to my account.

O K

J 115

F. D. ROBINSON
By ARDEN DAVIS
Purchasing Agent

(Testimony of Arden Davis.)

Q. (Mr. Hunt) Now, in response to the requisition described in Respondents' exhibit No. 12, did the Long Lake Lumber Company issue you a check?

A. Yes.

Q. And mailed it to F. D. Robinson?

A. Yes.

Q. What did you or Mr. Robinson do with it?

A. I gave it to Gooby.

Q. Was Robinson's account charged with the amount of this check? A. Yes.

Q. And were you charged, and was your account charged with all amounts paid out by the Long Lake Lumber Company at your request in accordance with the requisitions? A. Yes.

[1081]

Cross Examination

By Mr. Walker:

Q. Mr. Davis, I am calling your attention to your own testimony, that the peak of the logging season is usually in the month of August. At the peak of the season, approximately what is the number of employes engaged at Caribou?

A. In actual logging, I imagine it is close to 150.

Q. Were you present when Mr. Wise testified?

A. Yes.

Q. Did you hear all of his testimony?

A. I think I did.

Q. On cross examination, did you hear Mr. Wise state that [1121] the lock on the door may have been a night latch? A. Yes.

Q. Just prior to June 7, 1939, were the dozers working on the road? A. I think it was.

(Testimony of Arden Davis.)

Q. What do you mean by the term "reconciling your books with the Long Lake Lumber Company books"?

A. Bringing the accounts together.

Q. How did you do that?

A. We just go through the debits and credits back and forth between the Long Lake Lumber Company and F. D. Robinson.

Q. Where is that usually done?

A. In Spokane.

Q. Do you bring your books with you to Spokane? A. Yes.

Q. And the entries in your books are referred to the entries in the Long Lake Lumber Company's books? A. Not entry for entry, no.

Q. Generally speaking, that is the way in which reconciliation is made, is it not? A. Yes.

Q. If your net balance would not compare identically with the net balance as carried on the Long Lake Lumber Company books, you would have to refer to the several items where the discrepancies lay? [1122] A. Yes.

Q. Mr. Davis, did you hear the testimony of Mr. Brown, that there were just 81 trucking days in 1937? A. Yes.

Q. And in the year 1937, were any of the sawyers, jammers or skidders, paid off during the period when the trucks were not operating?

A. Well, I don't recall whether they were paid off in full or not; there were days that they didn't work on account of rain.

Q. At no time in 1937 on account of rain was the camp vacated and all the men paid off; is that correct? A. That is correct. [1123]

JAMES BROWN, JR.,

previously sworn, testified further in behalf of the Long Lake Lumber Company, respondent, as follows:

Direct Examination

Q. (Mr. Potts) Your name is James M. Brown, Jr.? A. Yes.

Q. And you have heretofore been sworn and testified as a witness for the Board? A. Yes.

Q. In your testimony, Mr. Brown, you described the duties which you performed in connection with the timber operations of the Long Lake Lumber Company, checking up on the logging operations. I merely wish to supplement what you have already told us by asking you if, during the years 1938 and 1939, you visited logging operations in this territory at which logs were produced by the Long Lake Lumber Company other than the Caribou Basin operation conducted by Mr. Robinson, and the other two or three which you mentioned in your direct testimony? [1147]

A. Yes.

Q. And what other operations did you go to in the course of your duties, visiting them in those years?

A. Well, the ones that I was connected with

(Testimony of James Brown, Jr.)

most of the time were the Spaulding operations up above Bonners Ferry on Mission Creek, and I had another job,—one was a yellow pine job, and one was a white pine job; and then the job of Graf's, who was located north of Fernwood, above St. Maries; and then another job that I had was Bundy's job.

Q. Where was that located?

A. That is just this side of Cabin City in Montana.

Q. Were these several operations which you have just mentioned being conducted at the same time Robinson's operation was being conducted?

A. Yes.

Q. And that is, during the years 1938 and 1939?

A. Yes.

Q. What is the fact as to whether or not you visited them in the performance of your duties, similar to those you performed by visiting the Caribou Basin operations?

A. It was in the same capacity, exactly.

Q. And did you do the same things?

A. Oh, yes.

Q. And was that your occupation and business in working for the Long Lake Lumber Company?

[1148]

A. Yes.

Q. Did you have anything to do with the conduct of any logging operations?

A. No.

Q. Have you been in the courtroom the greater

(Testimony of James Brown, Jr.)

portion of the time this hearing has been in progress?

A. Just about all the time.

Q. Have you heard the testimony of Leon Wise with respect to certain alleged conversations with you at different times in 1939 and 1938?

A. Yes.

Q. I wish to direct your attention to a conversation which Mr. Wise testified he had with you, which I now notice was sometime in August, 1937, in which the cost of an International Truck was being discussed, and some argument developed, some difference of opinion, as to what the cost of the International was; I will ask you if you recall any such conversation?

A. No, I don't recall it.

Q. You can't remember such an occurrence?

A. I can't remember it, no. [1149]

Q. (Mr. Potts) I direct your attention to an incident or conversation in which Mr. Wise said that you and, I believe, one Bart Cochrane were present,—a conversation had when Mr. Bart Cochrane was present, so Mr. Wise testified, which was near Colburn, and when you asked Wise why he and Ike Bonney had quit,—this being while he was working for Walt Brown, and this being after he had worked for Robinson; and he said, "Because we couldn't make it." To which you replied, "You are making it now; couldn't the man have something to do with it?" And then someone said, "If Wise says [1151] it couldn't be made, it couldn't be made."

(Testimony of James Brown, Jr.)

And then you said, "That is what I want to know. The set-up has got to be changed; that is what I am here for."

Did you have any such conversation with Mr. Wise, at any such time or place?

A. Not that I recall.

Q. Were you here at that time, or at any time for the purpose of changing any set-up?

Mr. Walker: Just a moment.

The Witness: Shall I answer?

Mr. Potts: Yes.

The Witness: What was the question?

Trial Examiner Hektoen: Read the question.

(Thereupon the pending question was read aloud as above recorded.)

A. No. You mean pertaining to logging?

Q. (Mr. Potts) Yes.

A. No.

Q. Did you have any authority to make any such changes? A. No.

Q. And in the fall of 1938, when Wise had attempted to turn around in the road, and had had some difficulty, and the conversation between you and he ensued, did you say to him, "I will see that a dozer comes up and punches some turnarounds in this road"? A. Not that I recall. [1152]

Q. Did you have any control over any dozer?

A. No.

Q. In the year 1938, shortly before the camp at Caribou Basin was closed down, did you state to

(Testimony of James Brown, Jr.)

Mr. Wise that you had come up to shut down the camp? A. No.

Q. Or words to that effect?

A. I couldn't have.

Q. Well, did you? A. No.

Q. And had you come up to shut the camp down? A. No.

Q. Did you have anything to do with shutting that camp down? A. Positively no.

Q. Were you in Sandpoint, Idaho, during the afternoon of Tuesday, June 7, 1939, the day on which Mr. Robinson shut down his camp in Caribou Basin in the morning, and were you, about five o'clock that afternoon, near or anywhere near the pool hall?

A. I don't recall,—yes, I recall that I was.

Q. You were there at that time? A. Yes.

Q. Did you see Leon Wise, either in front of the pool hall, near the pool hall, in Sandpoint, or inside of the pool hall on that occasion? [1153]

A. I can't remember seeing him outside, but I remember very distinctly seeing him inside.

Q. Do you recall anything else that you saw inside of the pool hall on that occasion? [1153]

A. Of course, I am acquainted with lots of people in the pool hall.

Q. By the way, what is the name of that pool hall? A. Eagle Pool Hall.

Q. Do you remember anyone in particular?

A. I remember this fellow Johnson.

Q. Herbert Johnson? A. Yes.

(Testimony of James Brown, Jr.)

Q. The organizer? A. Yes.

Q. Do you remember seeing him there?

A. Yes.

Q. And did you have a conversation with Mr. Wise, either inside or outside of the pool hall at that time?

A. I remember he was on one side of me, if I remember correctly, and Johnson was on the other; and both of them had a lot of things to say to me, but I was mostly interested in getting a glass of beer.

Q. But there was a conversation between you and those two parties? A. Yes. [1154]

Q. And who was doing the talking?

A. They were.

Q. Did Mr. Wise have considerable to say, or was he quite talkative?

A. Well, I don't know how much he said; I was not interested at that time; I had some other things to think about, and I was interested in getting a glass of beer, getting something to eat and getting away.

Q. Well, at that time and place, and in that conversation did Mr. Wise tell you or say to you, in substance, "We had a meeting this afternoon and called a strike for the look-out and unfair labor practices of the Long Lake Lumber Company"; do you recall that?

A. Well, I don't know; I heard so many things that afternoon I don't remember whether he said it, or someone else.

(Testimony of James Brown, Jr.)

I heard that they were having lots of trouble, and anticipated some more. That is all I remember about it.

Q. Can you recall whether or not Mr. Wise made that statement, in substance or effect? A. No.

Q. Did you say, in reply to such a statement, or at all, "You fellows were not locked out; I will tell you how this is: Frank owes us \$34,000, and owes the bank \$10,000. No chance to get the money back; the job is too large; there is too much friction. We will put him on a smaller job. We have a [1155] man coming from Oregon to take his place."

Did you make that statement, or anything in substance or effect as I have just stated it? Did you make such a statement?

A. If I made such a statement?

Q. Yes.

A. I don't remember making any such statement.

Q. And did Mr. Wise say, "Frank is under contract, and bonded for \$10,000," or anything to that effect? A. No.

Q. And did you say, "He," referring to Robinson, "has no more contract than you have; he is just a gypo, the same as you are"; did you make that statement, or words to that effect?

A. No.

Q. Or did you state that, "We," referring to

(Testimony of James Brown, Jr.)

the Long Lake Lumber Company, "are not even incorporated in the State of Washington"?

A. No, I didn't say that.

Q. And did you at that time and place, either in front of or inside of the pool hall, say to Mr. Wise, or in his presence, "It was all right for you fellows to organize. Our mills are organized, and we have no trouble," or words to that effect?

A. I don't remember saying it. [1156]

Q. And did you state, "We can't operate with your kind of a union; you would wait until we get the timber down, and then tie us up, or burn us up while we are shut down." Did you make that statement?

A. I didn't make any such statement.

Q. And did you state, "We don't have to get men out of the State; we can get 300 right here," and did Mr. Wise ask, "Who?" And did you say, "Men on relief or WPA." Did you make such a statement?

A. I don't recall.

Q. (Mr. Potts): Did you, at this alleged conversation, at the time and place indicated, state to Mr. Wise, or in his presence, you didn't have to get men out of the State, that "We can get 300 men right here"? Or anything to that effect? [1157]

A. No.

Q. Did Mr. Wise then ask you, in substance, who you were going to get, or just, perhaps, did he say, "Who", and in reply to his question, did you state, "Men on relief or WPA. We don't need the timber." A. No.

(Testimony of James Brown, Jr.)

Q. And did you state, "We are going to reopen the camp with a different management, or another and different management, and on a smaller scale"?

A. No.

Q. And did Mr. Wise then ask, "Well, what about the five million feet that are down," and did you say, "Three and one third million. We will pay stumpage of about \$14,000. It doesn't mean anything to us"? A. No.

Mr. Potts: You may examine.

Cross Examination

By Mr. Walker:

Q. Mr. Brown, do you recall whether or not during the day of June 7, 1939, you stated to anyone else, or had a conversation with anyone else,—

Mr. Potts: I will object to that as not proper cross examination. This is specific rebuttal as a part of our case, meeting certain testimony that has been offered as a part of the Board's case, and we have predicated this examination upon meeting the Board's case, and directed the examination [1158] to this particular conversation, and this alone; and we have opened up no other inquiry. Certainly, the rule that cross examination is confined to matters brought out on direct examination or connected therewith, applies. Such matters are not cross examination.

Mr. Walker: I didn't get my question finished.

Mr. Potts: I beg your pardon. I thought that you had. Very well.

(Testimony of James Brown, Jr.)

Q. (Mr. Walker): Was it your testimony that you did not at any time make a statement to anyone to the effect that if the men had a union of their own, or a union like the Long Lake Lumber Company, whatever the case may be, that it would be all right?

A. I don't remember ever making that statement.

Q. To anyone? A. That is right.

Q. At any time?

A. At any time or place.

Q. Do you know J. L. Finley?

A. Yes, sure.

Q. Did you see him at any time on the day of June 7, 1939?

A. Let me see. I saw him sometime, but I don't remember what day it was.

Q. Do you remember what he was doing just prior to the time the camp was shut down? [1159]

A. He was working on the landing.

Q. And do you recall where you saw him that day?

A. June 7, the day that the camp closed down?

Q. Yes.

A. I don't remember where I saw him.

Q. Do you recall whether or not you had a conversation with him that day?

A. Well, I don't recall. I remember having a conversation with him; I don't remember the particular conversations; I remember seeing him along

(Testimony of James Brown, Jr.)

in those days there; I can't place in my mind what it was.

Q. Do you recall what the conversation was?

A. I told you that I didn't recall talking to him.

Q. You don't remember seeing him that day?

A. I am trying to think of where it was, right now. It might have been on the landing.

Q. Did you make a statement to Mr. Finley on the afternoon of June 7, 1939,— [1160]

(Thereupon the question referred to was read as follows:)

“Did you have a conversation with Mr. Finley, on the [1162] afternoon of June 7, 1939, at the camp, at which Mr. Cecil Porter was present, when you stated, ‘If you fellows were organized into a union of your own, like the Long Lake Mill, we would recognize that union’?”)

A. Well, I don't remember any such conversation.

Mr. Walker: That is all.

Mr. Potts: That is all.

(Witness excused.)

Mr. Hunt: The respondent Robinson rests.

Mr. Potts: The respondent Long Lake Lumber Company rests.

Mr. Walker: Mr. Miller, please.

D. D. MILLER,

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Will you state your name?

A. D. D. Miller.

Q. You reside in Spokane? A. Yes.

Q. What is your position?

A. Staff Assistant in the Commercial Department of the Pacific Telephone & Telegraph Company.

Q. What are your duties in that regard, Mr. Miller?

A. Statistician, working on reports, and so forth.

Q. Do you have under your direction, in the preparation [1163] of your statistics, the records of long distance calls which have been placed by subscribers to the service of your employer?

A. They are not in my possession, no. Those records are in the possession of the manager of the company, whom I represent today.

Q. You have come here today at the request of the manager of the Spokane Office? A. Yes.

Q. And the long distance records are in the possession and control of the manager of the Spokane office? A. Yes.

Q. And the records which you have brought with you today have been delivered over to you at

(Testimony of D. D. Miller.)

the direction of the manager of the Spokane office?

A. Yes.

Q. May I have them, please? A. Certainly.

Mr. Walker: May we go off the record for a moment?

Trial Examiner Hektoen: Do you need a five-minute recess or such a matter?

Mr. Walker: Yes, I believe so.

Trial Examiner Hektoen: We will be in an informal recess for five minutes.

(Thereupon, at this time a short recess was taken, after which proceedings were resumed as follows:) [1164]

Q. (Mr. Walker): Mr. Miller, can you state from your records whether or not there was a telephone call placed from a telephone listed as Riverside 2434, in Spokane, Washington, to Sandpoint, Idaho, at about 6:52 p.m. on June 6, 1939?

Mr. Potts: We object to this as incompetent and irrelevant and not the best evidence. The records are the best evidence.

Mr. Walker: I intend to produce the records.

Mr. Potts: Counsel is asking for oral testimony.

Trial Examiner Hektoen: Is there any way that it can be gotten at from the records? I take it that the records will have to be explained.

Mr. Walker: That is correct.

Trial Examiner Hektoen: Upon counsel's statement that the records will be put in, you may proceed.

(Testimony of D. D. Miller.)

Q. (Mr. Walker, continuing): Do you recall the question? A. Yes, sir; I believe so.

Mr. Walker: May I state one thing further? When I said that the records would go in, Mr. Miller has said that he doesn't want the originals to go out of his possession, but the record which he has in his possession will have to be explained, and if you wish copies of them for that purpose, or for the purpose of the record, or have the original records read into the record, it makes no difference.

Mr. Potts: I don't care how they go in. I think the testimony should be from the records. [1165]

Trial Examiner Hektoen: I understand the testimony is from the records.

Mr. Potts: It is oral testimony. Counsel has now said that he does not expect to offer the records.

Mr. Walker: That portion of the records can be introduced by reading them into the record.

Trial Examiner Hektoen: I take it that can be done.

Mr. Potts: I object to its materiality unless it is connected with some matter.

Mr. Walker: Now, do you remember the question?

The Witness: I think I have forgotten.

Mr. Walker: Will you read the question, please?

(Thereupon the question referred to was read as follows: "Mr. Miller, can you state from your records whether or not there was a telephone call placed from a telephone listed as

(Testimony of D. D. Miller.)

Riverside 2434, in Spokane, Washington, to Sandpoint, Idaho, at about 6:52 p.m. on June 6, 1939?")

A. Yes, sir.

(Thereupon a telephone toll ticket was marked Board's exhibit 10 for identification.)

Q. (Mr. Walker): I hand you what has been marked as Board's exhibit 10 for identification and ask you what that is?

A. That is what is termed as a toll ticket, or a record of calls that are being placed from one exchange to another.

Q. What is the information that is set out in that record? [1166]

A. The date, the place from which the call is placed,—that is, the city; the telephone from which it is placed,—the city or town the call is placed from; as well as the city or town to which it is placed; the telephone number of the place to which the call is placed,—that is, the called point; the name of the person called; filing time, at which the call is placed, the number of minutes of conversation; and the class of conversation which is determined by whether or not it is a person-to-person call, or a station-to-station call.

A station-to-station call is a call made to a certain number without the person being named who is called.

Q. Does it likewise show the time when the conversation begins? A. Yes.

(Testimony of D. D. Miller.)

Q. Will you explain that, please?

A. On the reverse side of the ticket, there are three dials stamped by a machine at the switch-board; one dial indicates the hour and the minute that the conversation started; the other two dials record the number of minutes and seconds of the conversation; and that is all.

(Thereupon a telephone toll ticket was marked Board's exhibit No. 11 for identification.)

Q. (Mr. Walker, continuing): Mr. Miller, I hand you what has been marked as Board's exhibit 11 for identification, and ask [1167] you what that is?

A. That is a call placed on June 6.

Mr. Potts: I can't hear the witness.

Q. (Mr. Walker): What has been marked as Board's exhibit 11 for identification is a record of a long distance call, is that correct?

A. Yes.

Q. Does it show the date upon which the call was placed? A. Yes.

Q. And the city from which the call originated?

A. Yes.

Q. And the listing from which the call was made? A. The telephone number, yes.

Q. Does it also show the individual who placed the call? A. Yes.

Q. Now, does it show the place to which the call was directed? A. Yes.

(Testimony of D. D. Miller.)

Q. And does it show whether or not the call was directed to any listing at the called city?

A. Yes.

Q. Does it show what individual received the call?

A. Yes.

Q. Is the filing time indicated thereon?

A. Yes. [1168]

Q. Is the duration of the call indicated?

A. Yes.

Q. I call your attention to the entries under the area designated as "Special Instructions". Will you relate what that refers to?

A. It was docketed from the "Spokane City Club".

Q. How are the special instructions put on the call docket? Who put the special instructions on there?

A. The operator who was handling the call.

Q. And the operator put the instructions on there pursuant to the information given by the person who was making the call; is that correct?

A. Yes.

Q. Will you explain what the symbols and letters mean which are set out on the last entry on the face of what has been marked as Board's exhibit 11 for identification?

A. The first symbol is "D. A.", indicating there was no answer at the called point; "Don't answer". It indicates the time, which is 7:21 p.m.

Q. And what is on the succeeding line?

(Testimony of D. D. Miller.)

A. "A.G.", which means "Try again". The other initial "A.Y.", means "Talk to anyone". Then there is, "Should Answer. Try Again. 7:21."

Q. Does Board's exhibit 11 indicate whether or not the call was completed? [1169] A. Yes.

Q. And does it indicate when the conversation commenced? A. Yes.

Q. Does it indicate when the conversation ended? A. Yes.

Mr. Walker: I will offer in evidence what has been marked as Board's exhibits 10 and 11 for identification.

Mr. Potts: To which counsel objects on the ground that it is incompetent, irrelevant and immaterial; it does not tend to prove any issue in this case, nor has it been shown to be connected in any way with any matter in controversy.

Mr. Walker: If for no other reason, it certainly is competent for the purpose of testing the credibility of the witnesses.

Trial Examiner Hektoen: It will be admitted.

(Thereupon the documents heretofore marked Board's exhibits 10 and 11 for identification were received in evidence.)

DATE **JUN 6 1934** 1 A OUT

PLACE **SPOKANE,** FROM STATE **WASH.**

TEL. NO. **2434**

PERSON _____

SPEC. INST. _____

TO _____ STATE _____

COLLECT **18 F 11**

NAME **Frank Robinson**

ADDRESS _____

ADDRESS NAME _____

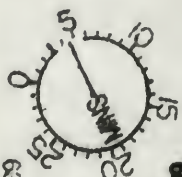
FLIGHT TIME 6-52 P.	OPERATOR 54
TOLL CENTER	DIR. 5 CLASS 8
TERM. VIA	REPORT _____ MESSAGE _____
PAY. ROUTE Cal	CHARGE 125
ALT. ROUTE	

P

56 tk

13
#10

P.M.



NATIONAL LABOR RELATIONS BOARD
 BOARD {
 PEN TO HER { EXHIBIT NO. 10
 RESPECT {
 FURNISH {
 CASE NO. 538
 IN THE MATTER OF *Long take the Co*
 DATE *3-20-40* WITNESS *Muller*
 DANIEL W. *Wadsworth* OFFICIAL REPORTER
 BY

(Testimony of D. D. Miller.)

Mr. Walker: It is agreeable with counsel that, in lieu of the original standing in the record, photostatic copies may be substituted, the photostatic copies to cover both sides of both exhibits.

Trial Examiner Hektoen: Very well.

Cross Examination

By Mr. Potts:

Q. Referring to Board's exhibit No. 10, the [1170] first ticket about which you were interrogated, I will ask you to state whether or not that ticket discloses who the person was who placed that call? A. No, sir.

Q. All that it discloses with reference to who made the call, or who initiated the call, is the telephone number from which it was placed?

A. That is right.

Q. Now, you stated that the stamps on the back indicate how long the call lasted? A. Yes.

Q. How long did that indicate that the call indicated by that ticket lasted?

Trial Examiner Hektoen: That is exhibit No. 10?

Mr. Potts: Still Exhibit No. 10.

A. 4 minutes and 30 seconds.

Q. (Mr. Potts): On the face of the ticket, Board's exhibit No. 10, is an item reading "charge", which is printed and a part of the form, and in the space in which that word appears are the figures "125". What does that "125" mean?

A. \$1.25.

(Testimony of D. D. Miller.)

Q. That means the charge for that call was \$1.25? A. That is right.

Q. What time does exhibit No. 10 show that call was placed? A. 6:25 p.m. [1171]

Q. When does it show it was completed?

A. About 6:58.

Q. Was that call at a time of day which brought it within the regular day rate for a long distance toll? A. Yes.

Q. Now, referring to Board's exhibit 11, what time does this ticket indicate or show that this call was placed? A. 7:18 p.m.

Q. Does it indicate that there was a delay in completing the call? A. Yes.

Q. And at what time was it completed?

A. 7:43.

Q. Now, was that call placed and made at a time of day when it took the day rate?

A. No, sir.

Q. At what hour did the rate change?

A. 7:00 p.m.

Q. And if the call is placed before 7:00 p.m. and not completed until after 7:00 p.m., does it take the night rate, or the evening rate? A. Yes.

Q. Now, as to the length of that call, it is a fact that there was a delay in putting through the call, is it not? A. Yes. [1172]

Q. Does the fact that there was a delay in putting through the call add to the length of the call? That is with respect to the charge to the subscriber? A. No, sir.

(Testimony of D. D. Miller.)

Q. Well, when there is difficulty in making a connection, with the party called, isn't there more charged or a greater proportionate charge?

A. No; that is included in the person-to-person rate; in the person-to-person call, it is understood that some calls cannot be completed immediately, and a higher rate applies to that type of call.

Q. And isn't all the time that the operator uses to get the call charged against the subscriber?

A. No, sir.

Q. Do you mean to tell me that the operator does not fix the commencement of that call until the contact is actually made? A. Right.

Q. And ends it when the contact ceases?

A. As indicated by the ticket there (indicating).

Mr. Potts: That is all.

Redirect Examination

By Mr. Walker:

Q. I have one question. Mr. Miller, have you determined who has the listing of Riverside 2434 in Spokane, Washington? [1173]

A. That was J. M. Brown.

Mr. Walker: That is all.

Mr. Potts: That is all.

Trial Examiner Hektoen: Thank you, Mr. Miller.

(Witness excused.) [1174]

ARDEN DAVIS

recalled as a witness by and on behalf of Respondent Robinson, being already duly sworn, further testified as follows:

(Thereupon a document was marked Respondents' Exhibit 13 for identification.)

Direct Examination

By Mr. Hunt:

Q. Mr. Davis, you are the Arden Davis who testified in this case heretofore? A. I am.

Q. The bookkeeper for Frank D. Robinson?

A. I am.

Q. It has been stipulated that the instrument marked as Respondents' exhibit 13 shall be admitted in evidence. I will ask you what that exhibit is?

A. That is a monthly statement of the log output, and the woods inventory.

Q. At the Caribou Basin?

A. At the Caribou Basin.

Q. Does it show the amount of logs in the woods in December of 1938? A. Yes, it does.

Q. What is that figure?

A. 1,541,380 feet. [1218]

Q. Now, does it show the number of logs sawed up to July 1, 1939? A. Yes, it does.

Q. And what is that figure? A. 1,350,590.

Q. That makes up a total of 2,891,890?

A. Correct.

Q. In the month of June,—does it show the amount of logs that were sawed in June?

(Testimony of Arden Davis.)

A. No. They are included in the number shown sawed to July 1, 1939.

Q. Can you tell me approximately how many logs were sawed in the month of June, 1939?

A. For just the few days; I imagine it was 50,000; most of it was in May.

Q. Can you tell me whether or not any logs were sawed between June 7 and June 30, 1939?

A. No, there was not.

Q. How many thousand feet of logs were hauled during June? A. 181,360 feet.

Q. Then you have a figure of 2,710,530 feet; that is, logs lying the woods on June 30, 1939?

A. Yes.

Q. Does this also show the poles in the woods?

A. Yes. [1219]

Q. How many of them?

A. 5009 pieces.

Q. How many of the poles were skidded in the spring? A. 4,400 pieces.

Q. You have a figure of 609 poles left to skid. What does that mean?

A. They were not skidded; 4,400 were skidded, and these had not been skidded.

Q. What is this reference to Marska, 5,860 lineal feet?

A. That was a couple of truckloads, and that is out of the 5,009 pieces total.

Q. That represents 5,860 feet of cedar poles?

A. Lineal feet, yes.

(Testimony of Arden Davis.)

Trial Examiner Hektoen: What other kind of feet are there?

Mr. Hunt: I think that I will bring that out.

Trial Examiner Hektoen: All right.

Q. (Mr. Hunt) Poles are sold by the length?

A. Yes.

Q. And their lengths are so many 18's, 20's, 30's, 35's, and so on? A. Yes.

Q. And that varies,—the price varies on those poles, depending on the length and the diameter?

A. Yes.

Mr. Hunt: That is all. [1220]

Cross Examination

By Mr. Walker:

Q. The figure of 2,710,530 feet in the woods includes the logs down, logs skidded and logs decked?

A. In the woods, yes.

Q. Approximately what was the inventory of the logs in the woods on December 31, 1937?

Mr. Hunt: 1937?

Mr. Walker: Yes.

A. I can't tell you that, offhand.

Q. (Mr. Walker) About a million and a half?

A. I would imagine about that.

Q. Approximately what was the total amount of board feet of logs in the woods as of December 1, 1936?

A. Well, it was approximately the same; it might vary some, but I can't remember.

Mr. Walker: That is all.

(Testimony of Arden Davis.)

Trial Examiner Hektoen: Respondents' exhibit 13 is admitted on stipulation?

Mr. Walker: Yes.

Trial Examiner Hektoen: It is admitted in evidence on stipulation.

(Thereupon the document heretofore marked Respondents' exhibit 13 for identification was received in evidence.)

Mr. Hunt: That is all. [1221]

Mr. Walker: Mr. Burford.

(Witness excused.)

A. J. BURFORD,

previously sworn, was recalled as a witness by and on behalf of the Board, and further testified as follows:

Direct Examination

By Mr. Walker:

Q. Your name is A. J. Burford? A. Yes.

Trial Examiner Hektoen: You have testified before?

The Witness: Yes.

Trial Examiner Hektoen: And you were sworn at that time?

The Witness: Yes.

Q. (Mr. Walker, continuing) Mr. Burford, you were a member of the union committee which called on Mr. Robinson at his office, at which time neither Mr. Johnson nor Mr. Hunt were present; is that correct? A. Yes.

(Testimony of A. J. Burford.)

Q. Were you present and heard Mr. Robinson's testimony relative to that meeting?

A. I don't believe I was.

Q. Will you relate whether or not the committee which called on Mr. Robinson at that time had with it the cards which have been admitted here as exhibit 5?

Mr. Hunt: Pardon me a minute. May we have the date fixed?

Mr. Walker: No one has been able to fix it yet. [1222]

Q. (Mr. Walker) Can you fix the date?

A. No, not exactly.

Q. Can you fix it approximately?

A. It was somewhere around the 23rd.

Mr. Hunt: Of June?

The Witness: Yes.

Trial Examiner Hektoen: Well, this is the same meeting that has been testified to.

Mr. Hunt: When Mr. Hunt and Mr. Johnson left?

Mr. Walker: No. The meeting at which neither Mr. Hunt nor Mr. Johnson were present at any time?

Trial Examiner Hektoen: That is what I meant.

Mr. Hunt: I am just trying to identify it in my mind. Mr. Robinson testified that the committee did not meet upon him for that purpose. Now, if that is the meeting, let us get the date, and the approximate time and place it was, and who was there.

(Testimony of A. J. Burford.)

Trial Examiner Hektoen: Was it about June 23?

The Witness: June 23, about.

Mr. Walker: I said, in Mr. Robinson's office. This meeting is in contradistinction to the one when you left Mr. Robinson's office.

Trial Examiner Hektoen: There are two meetings, one at which Mr. Hunt and Mr. Johnson were never present, and one in [1223] which they withdrew?

Mr. Walker: That is right.

Q. (Mr. Walker) Will you state whether or not the committee had with them at the time of that meeting, the cards which have been introduced in evidence and marked as Board's exhibit No. 5?

A. Yes, we did.

Q. Was there any discussion at that time relative to the holding of a card check?

A. I don't believe there was.

Q. What was discussed at that meeting?

A. Oh, union and working conditions.

Q. And there was a general discussion between the committee and Mr. Robinson? A. Yes.

Q. And who were the members of the committee who were present at that meeting?

A. Mr. Wise, Mr. Moore, Mr. Smith, Mr. Garvin, and myself.

Q. Was there any discussion at that time regarding the holding of an election?

A. I don't believe there was.

Q. Mr. Burford, did you work at Caribou throughout the month of June, 1937?

(Testimony of A. J. Burford.)

A. Not throughout the month, no.

Q. What occurred? [1224]

A. The camp was shut down on the morning of June 7.

Q. You must have misunderstood my question. Did you work at Caribou throughout the month of June, 1937? A. Yes.

Mr. Walker: That is all.

Mr. Hunt: That is all, Mr. Burford.

(Witness excused.)

Mr. Walker: Mr. Wise, please.

LEON WISE,

previously sworn, was recalled as a witness by and on behalf of the Board, and further testified as follows:

Trial Examiner Hektoen: Your name is Leon Wise?

The Witness: Yes.

Trial Examiner Hektoen: You testified before in this hearing?

The Witness: Yes.

Trial Examiner Hektoen: You were sworn at that time?

The Witness: Yes.

Direct Examination

By Mr. Walker:

Q. Mr. Wise, were you a member of the Union Committee which called upon Mr. Robinson at his

(Testimony of Leon Wise.)

office, at which time neither Judge Hunt nor Mr. Johnson were present? A. I was.

Q. At that time,— [1225]

Mr. Hunt: (Interposing) Will you fix the time and place, please?

Q. (Mr. Walker) Where did you meet at that time? A. At Mr. Robinson's office.

Q. And can you recall what date it was?

A. It was along the latter part of June.

Trial Examiner Hektoen: Do you agree with Mr. Burford's estimate?

The Witness: That was pretty close. I wouldn't say the date.

Q. (Mr. Walker, continuing) Was there a discussion that day? A. Yes.

Q. What was the discussion?

A. Well, I could reconstruct it almost word for word all the way through, if you want it that way, or how do you want it? I can give you almost everything that was said. I did all the talking,—Robinson and I, and if the Committee can't verify it, why,—

Q. Well, now, was there a discussion about the holding of a card check at that time?

A. There was.

Q. How did that come up?

A. Well, I insisted all the time that the committee and Mr. Robinson would get together, and we could settle the whole thing. I took the cards with me to that meeting, and we were [1226] going to make a supreme effort to settle it, and thought

(Testimony of Leon Wise.)

it would settle it that day; I knew Frank's attitude at the camp and at that meeting, and I knew that if he still felt that way, we still could settle it. So, we brought up a few minor things, like, Frank had refused to speak to us since that time; he said he hadn't done it intentionally, and then I asked him about his attitude and the way he felt then, and the way he was when we held the meeting, and why.

Q. Well, now, how did the discussion of the card check arise? A. I was leading up to that.

Q. All right.

A. So I told Frank that, so far as I was concerned, if it was a personal grudge, I would step out of the picture, and I would never ask for a job again, and would never bother him again, and all the committee said the same thing.

Frank said, "I haven't got a thing; my hands are tied; I can't say a thing." I said, "Let's get the cards checked against the payroll; let's have it over with. We are not asking you for anything but union recognition." I said, "We are not trying to hurt you; we are trying to help you; we always have." Frank said, "You haven't got all the men." I said, "We don't have all the men that are in the cards." I said I knew that, and then I said that I had two cards that I would give him, that we didn't want them in there. I said, "I will give them to you; we don't want them. We will give them to you." [1227] And Frank said, "I can't use them, either."

Q. Were the cards checked?

A. No.

(Testimony of Leon Wise.)

Q. Was there a discussion about an election?

A. No.

Q. Were you on the Caribou Road the day when Mr. Rapp, Mr. Thurlow and Mr. Asher came up there? A. I was.

Q. Was there a discussion about union recognition at that time? A. There was.

Q. Did the committee or yourself have the cards which have been introduced in evidence here as Board's exhibit 5, at that time? A. We did.

Q. What was said about the holding of a card check at that time?

A. Well, we offered to hold a card check right there, or an election, right in the middle of the road, with the whole membership present.

Q. To whom did you make that offer?

A. To Mr. Robinson and Rapp.

Q. Did he reply to that? A. Yes.

Q. What did he say? What did Robinson say? [1228]

A. He said, "I will not recognize the union."

Mr. Walker: That is all.

Cross Examination

By Mr. Hunt:

Q. You had the card when you were in Robinson's office? A. Yes.

Q. You had the cards when you were at the bridge when Rapp was there?

A. Johnson had them there.

Q. You had them at the camp?

A. I had them at the office.

(Testimony of Leon Wise.)

Q. At the office in camp?

A. No, not in camp.

Q. Oh, the office was in Sandpoint?

A. Yes. You know that.

Mr. Hunt: That is all.

(Witness excused.)

Mr. Walker: Mr. Finley.

J. L. FINLEY

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. State your name. A. J. L. Finley.

Q. Where do you reside? [1229]

A. At the present time, I am at 1213 East 69th Street, Seattle, Washington.

Q. Prior to that, where had you resided?

A. Sandpoint, Idaho.

Q. What is your occupation, Mr. Finley?

A. Well, for the last 8 years, up until 1939, I have been employed by the Forest Service.

Q. In 1939, were you employed there? First, who were you employed by?

A. The Long Lake Lumber Company, for Mr. Frank Robinson.

Q. What work did you do that year?

A. I unloaded trucks at the landing.

(Testimony of J. L. Finley.)

Q. Do you recall the date when you first started to work? A. I do.

Q. What date was that?

A. The fifth of June.

Q. And did you work that day? You started to work on the fifth? A. Yes.

Q. Did you work the next day, on the 6th?

A. Yes, we worked until the afternoon of the 6th. We had landing work to do; there was not many trucks coming in.

Q. Just a moment. Did you learn of a union meeting that was held at camp along in June of 1939? A. Not until the next morning. [1230]

Q. Did you work any that day, the next day following the time when the union meeting was held? A. I didn't get the question.

Mr. Walker: Will you read it please?

(Thereupon the pending question was read aloud by the reporter as above recorded.)

A. No, I was on the job, and there was no trucks coming down; they moved from the S & I landing to the Great Northern; and I met the men coming down, and they notified us there would be nothing more to do.

Q. Now, after the men told you that, what did you do?

A. My partner and I took our tools back to camp.

Q. And when you got to camp, did you see anyone? A. I did.

(Testimony of J. L. Finley.)

Q. Whom did you see up there?

A. I talked with Mr. Robinson and Jim Brown, Jr.

Q. Where did that talk take place?

A. I guess you would call it the bunkhouse; it was not in the office; it was where Frank and Jim stayed,—in a little house.

Q. What was said at that time?

A. Well, I asked what was going on, naturally, and they told me, first one and then the other,—I don't remember which one,—they said there was a strike pulled the day before; the men asked for \$4.80 minimum, and general camp [1231] improvement, and they had agreed to give that to the men. They said that then, the next morning, some of our committee,—I don't remember it word for word, but they said that they wanted a guarantee of \$6 a day for sawyers, and \$7 for gypos; and he said that he could not operate at that, so he had shut the camp down.

Q. Was there any discussion at that time about any particular union?

A. Well, Jim Brown, Jr., he said, "We have a union in Spokane. Our mills are organized of local fellows. If you fellows had an organization of that kind amongst yourselves, we would recognize that sort of a union."

Q. Do you know what kind of an organization exists at the Long Lake Lumber Company mill at Spokane?

(Testimony of J. L. Finley.)

A. No. The way I understood it, it was something like the 4-L Union.

Mr. Hunt: I will object. The witness has already said that he doesn't know; he is just guessing at it.

Trial Examiner Hektoen: All right.

Q. (Mr. Walker): Was there any discussion about the future employment at that time?

A. Well, I was interested in work; I was out of work, and I wanted to work, and I asked Jim and Frank, both, if they continued to operate in this country or anywheres else, that I would like work; and they both told me that if they operated [1232] anywhere, or could use me, they would give me work.

Mr. Walker: That is all.

Cross Examination

Q. (Mr. Hunt): And did you go back to work later on? A. Yes.

Q. And you worked for Robinson from about the 19th of July until you were hurt on the 24th,—on the 21st,—of September? A. Yes.

Q. At that time, you broke a bone in your foot?

A. Yes.

Q. And you have been laid up ever since?

A. Yes, I have been laid up; well, I am able to work now.

Q. But you couldn't go back to work during the season of 1939?

(Testimony of J. L. Finley.)

A. No. I was not able to go back to work during the period of their operations.

Mr. Hunt: That is all.

Mr. Walker: That is all, Mr. Finley. Thank you.

(Witness excused) [1233]

JAMES M. BROWN, SR.,

previously sworn, was recalled as a witness by and on behalf of the Respondent Long Lake Lumber Company, and further testified as follows:

Trial Examiner Hektoen: You have been previously sworn, Mr. Brown?

The Witness: Yes. [1247]

Direct Examination

Q. (Mr. Potts): You are the same James M. Brown who testified on behalf of the respondents previously in this hearing? A. Yes. [1248]

Q. Do you recall the construction of a jammer here in Sandpoint at the Humbird Blacksmith Shop, sometime in the winter or early spring of 1937? A. Yes, I do.

Q. Did you go to the blacksmith and observe the construction of the jammer while it was in progress? A. Yes, I did.

Q. How many times, Mr. Brown, do you think?

A. Oh, I would imagine twice.

(Testimony of James M. Brown, Sr.)

Q. If you were in Sandpoint and had time, did you take advantage of it to see it?

A. If I was in Sandpoint, I went to see it.

Q. Were you interested in the construction of that jammer? A. Yes.

Q. Was it a new proposal?

A. It was an innovation to everyone.

Q. In what respect?

A. It was a double drum jammer; faster than anything that we [1252] had had heretofore.

Q. If it was successful, was it designed to be more efficient in the skidding of logs? A. Yes.

Q. Were you interested in finding out whether such a jammer could be made successful?

A. Very much so.

Q. And did that interest have any particular reference to the Caribou Basin job as distinguished from any other logging operations?

A. I was interested in it from the standpoint of all logging operations.

Q. Who was actually in charge of the construction of the jammer, the man who had the brains?

A. Kenneth Critchell, entirely.

Q. And did you make the remarks, or do you recall making remarks at one of those visits, that you wanted to see a jammer that would stand up, or words to that effect?

A. I don't remember, but I hope I did.

Q. That is the way you felt about it?

A. That is the way I felt about it.

Mr. Potts: That is all.

(Testimony of James M. Brown, Sr.)

Cross Examination

Q. (Mr. Walker): Was it the situation that Mr. Critchell had the brains and Mr. Doyle the brawn? [1253]

A. I think, as I followed it from my observation, Mr. Critchell was the one who designed it, and was the only one capable of furnishing the motive power for building it.

Q. Doing what?

A. Giving the directions for building it.

Q. What do you mean by "Motive power"?

A. I mean the direction for building it; he designed it, the greater part of it, in conjunction with Mr. Robinson.

Q. You mean that the double drum skidder is the brain child of Mr. Critchell?

A. That particular one, yes.

Q. But he is not the originator of the double drum skidder?

A. Well, I wouldn't say that; there are many different kinds; I wouldn't say that, no.

Q. Double drum skidders have been used for quite a while prior to that?

A. Not quite a while; at least, I had never seen one.

Q. You mean that 1937 was the first year that a double drum skidder was used in logging operations anywhere?

A. I didn't say that. [1254]

Q. (Mr. Walker): The Long Lake Lumber

(Testimony of James M. Brown, Sr.)

Company had had experience prior to that time with what type of jammer, or skidder?

A. One that had a single drum; I think we had tried one that wouldn't work,—

Q. You didn't have a doubled rum?

A. We started one, and it didn't work.

Q. On this particular job that Mr. Critchell was working on, that was an attempt to improve on the prior one?

A. No; it was a different one entirely. [1255]

Q. But the construction work that Mr. Critchell was undertaking on this particular double drum skidder or jammer was an attempt to improve upon the prior one?

A. No, it was not.

Q. Let me finish. The work that Mr. Critchell was doing on this particular drum was an attempt to improve upon the prior double drum that you had had?

A. No, sir.

Q. The prior double drum had not proved practical or feasible, isn't that true?

A. I don't think,—the double drum I am talking about,—if it is the same one I am talking about,—Mr. Critchell had never seen it.

Q. That is correct. The prior double drum had never proved practical or feasible?

A. It never was completed.

Q. It never did operate?

A. That is right.

Q. It was junked?

A. Yes.

Q. And the particular double drum Mr. Critchell was working on was an attempt to remedy the defect on the previous double drum jammer?

(Testimony of James M. Brown, Sr.)

A. Mr. Walker, I have answered it three times, "no", to the same question. [1256]

Q. What was wrong with the prior double drum?

A. I don't know.

Q. Did you ever learn why it didn't operate?

A. No.

Q. What was the difference between the double drum that Mr. Critchell worked on and the prior double drum? A. I don't know, myself.

Q. Did the double drum that Mr. Critchell worked on ever go into operation?

A. I think it did; I don't know; however, I think it did.

Q. That one did function?

A. It worked on the road up there.

Q. That one did function?

A. I never saw it operate.

Q. Did you learn that it was taken to Caribou?

A. The last time I saw it, it was crossing the Caribou Bridge.

Q. Where was it going?

A. It was starting to Caribou.

Q. And did it go to Caribou then? It did, didn't it? A. Yes, I believe it did. [1257]

Mr. Hunt: The Respondent Robinson rests.

Mr. Potts: The Respondent Long Lake Lumber Company rests.

Trial Examiner Hektoen: Is there anything further?

Mr. Walker: Nothing further.

Trial Examiner Hektoen: It is the pleasure of

(Testimony of James M. Brown, Sr.)

the Trial Examiner at this time to afford the parties, should they request [1258] it, an opportunity for oral argument.

In reference to such request, I take it that argument is waived.

It is also the pleasure of the Trial Examiner to afford the parties an opportunity to file briefs with him, should they so desire, within 15 days of today.

Mr. Potts: Does that mean for each side concurrently?

Trial Examiner Hektoen: Yes.

Mr. Hunt: We certainly want the opportunity to file briefs.

Trial Examiner Hektoen: They should be addressed to the Trial Examiner, in care of the Chief Trial Examiner, in Washington, D. C.

Mr. Potts: That is, to yourself as Trial Examiner in care of the Chief Trial Examiner?

Trial Examiner Hektoen: Right. There is one further announcement on the record, to the effect that any party may file a brief with the Board within 30 days of the date of the order transferring the case to the Board, which is done pursuant to Section 32 of the Rules and Regulations which you have before you, Mr. Potts.

Mr. Potts: Yes.

Trial Examiner Hektoen: In the absence of further business or motions, the hearing will be adjourned.

(Thereupon, at 11:05 o'clock a. m. March 21, 1940, the hearing was concluded.) [1259]

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LONG LAKE LUMBER COMPANY and
F. D. ROBINSON,
Respondents.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, “In the Matter of Long Lake Lumber Company and F. D. Robinson and International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations,” the same being Case No. C-1729, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Full enumerated, said documents attached hereto are as follows:

- (1) Stenographic transcript of testimony before

Josef L. Hektoen, Trial Examiner for the National Labor Relations Board, on March 11, 12, 13, 14, 15, 16, 18, 19, 20, and 21, 1940, together with all exhibits introduced in evidence.

(2) Copy of stipulation for the correction of the stenographic transcript, dated May 24, 1940.

(3) Copy of order for the correction of stenographic transcript, dated May 28, 1940.

(4) Copy of the Intermediate Report of Trial Examiner Hektoen, dated November 2, 1940.

(5) Copy of order transferring the case to the Board, dated November 18, 1940.

(6) Copy of respondent's, Long Lake Lumber, exceptions to the Intermediate Report.

(7) Copy of respondents, F. D. Robinson, exceptions to the Intermediate Report.

(8) Copy of union's exceptions to the Intermediate Report.

(9) Copy of union's motion to substitute "Local #239" for "Local #119", filed February 11, 1941.

(10) Copy of notice of aforesaid motion issued by the National Labor Relations Board May 22, 1941.

(11) Copy of order changing designation of labor organization, dated June 9, 1941.

(12) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board August 22, 1941, together with affidavit of service and United States Post Office return receipts thereof.

(13) Copy of respondent's, F. D. Robinson, pe-

tition for modification of the Board order dated August 22, 1941, sworn to December 13, 1941.

(14) Copy of order denying aforesaid petition, dated January 3, 1942.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 6th day of February 1943.

[Seal]

JOHN E. LAWYER

Chief, Order Section

National Labor Relations

Board

[Endorsed]: No. 10368. United States Circuit Court of Appeals for the Ninth Circuit, National Labor Relations Board, Petitioner, vs. Long Lake Lumber Company and F. D. Robinson, Respondents. Transcript of Record. Upon Petition for Enforcement of an Order of the National Labor Relations Board.

Filed February 12, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10368

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LONG LAKE LUMBER COMPANY AND
F. D. ROBINSON

Respondents.

PETITIONER'S STATEMENT OF POINTS

Pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the Trial of the above-entitled case to the Court:

I

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1), (3), and (5) of the Act.

II

The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 6th day of
February 1943.

ERNEST A. GROSS

Associate General Counsel
National Labor Relations
Board

[Endorsed]: Filed Feb. 12, 1943. Paul P.
O'Brien, Clerk.

No. 10368

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**LONG LAKE LUMBER COMPANY and F. D. ROBINSON,
RESPONDENTS**

**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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FILED

MAY 31 1943

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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10368

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LONG LAKE LUMBER COMPANY and F. D. ROBINSON,
RESPONDENTS

*ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board, herein referred to as the Board, for enforcement of its order issued against respondents pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*), herein referred to as the Act. Respondent Long Lake Lumber Company (hereinafter called Long Lake) is a Washington corporation having its principal place of business in Spokane, Washington, where it is engaged in the manufacture and sale of lumber. Respondent F. D. Robinson is an individual engaged in logging operations on behalf

of Long Lake at Caribou Basin, Sandpoint, Idaho, where the unfair labor practices occurred. The Court's jurisdiction is based on Section 10 (e) of the Act.

STATEMENT OF THE CASE

Upon charges filed by International Woodworkers of America, Local Union No. 119, affiliated with the Congress of Industrial Organizations (herein called the Union) and upon the usual proceedings under Section 10 of the Act, fully set forth in the Board's decision (R. 12-16), the Board on August 22, 1941, issued its findings of fact, conclusions of law, and order (R. 11-53; 34 N. L. R. B. 700), which may be briefly summarized as follows:

The business of respondents (R. 16-18).—Long Lake operates two lumber mills in Spokane, Washington, obtaining its logs, in part, from a tract of land at Caribou Basin, Sandpoint, Idaho, upon which it has timber rights (R. 116-117, 469-479). Long Lake's logging operations on this tract are conducted by Robinson (R. 156-157). During 1939 Robinson cut and shipped to Long Lake's mills at Spokane, Washington, approximately 7,900,000 feet of timber (R. 452-453). In 1939 Long Lake sold 50,000,000 board feet of lumber, valued at \$600,000, of which between 60 to 75 percent were shipped to customers outside the State of Washington (R. 453, 457, 459-460).¹

¹ Upon these undisputed facts the Board's jurisdiction over respondents' operations is clear, as respondents concede. See *N. L. R. B. v. Carlisle Lumber Co.*, 94 F. (2d) 133, 141 (C. C. A. 9), cert. denied, 304 U. S. 575; *N. L. R. B. v. Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 21 (C. C. A. 9); *N. L. R. B. v. Weyerhaeuser Timber Co.*, 132 F. (2d) 234, 235 (C. C. A. 9).

The unfair labor practices (R. 18-38).—Respondents shut down the Caribou Basin logging camp and locked out the employees from June 7 to July 11, 1939, in order to prevent organizational activities among the employees and to avoid collective bargaining with the Union, thereby discriminating against its employees in violation of Section 8 (3) of the Act and refusing to bargain collectively with the Union in violation of Section 8 (5) of the Act; respondents at a series of conferences after the shut-down refused to bargain collectively with the Union in good faith, thereby further violating Section 8 (5) of the Act; and respondents by the foregoing and other acts interfered with, restrained, and coerced their employees in the exercise of their rights under the Act, thereby violating Section 8 (1) of the Act.²

The Board's order (R. 49-53).—The Board's order, modified as requested at pp. 26-27, *infra*, directs respondents to cease and desist from the unfair labor practices found; upon request, to bargain collectively with the Union; to make whole the employees discriminatorily locked out for the period June 7 to July 11, 1939; upon application to reinstate the employees who the Board found had gone out on strike as a result of respondents' unfair labor practices, with back pay from 5 days after any refusal of their applications made pursuant to the Board's order; and to post appropriate notices.

² The pertinent Sections of the Act are quoted in an appendix to this brief (see pp. 29-32, *infra*).

SUMMARY OF ARGUMENT

I. The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondents have engaged, and are engaging, in unfair labor practices in violation of Section 8 (1), (3), and (5) of the Act.

II. Both Robinson and Long Lake are employers of the men here involved.

III. The Board's order is valid and proper under the Act.

ARGUMENT

POINT I

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondents have engaged, and are engaging, in unfair labor practices in violation of Section 8 (1), (3), and (5) of the Act.

A. The organization of the Union; the precipitate closing of the Caribou Basin camp; the declaration of a strike against the lockout

Soon after the Caribou Basin logging camp was opened for the 1939 season late in the spring of that year, the Union initiated a drive for members among the camp employees (R. 389). A number of employees joined in May and by June 5 a substantial majority of the 93 employees eligible for membership had signed membership application cards designating the Union as their sole collective bargaining agent (R. 397-400). On June 5, Robinson summoned employee Leon Wise, one of the leaders in the Union membership drive, into his office and berated him for his organizing activities, informing him: "Wise, I understand you are organizing for the CIO in this camp, and I understand you passed out four or five cards to men in this camp. Now, if you have, I want to fire you and every damned

man you gave a card to. And if there is another fellow working with you here, I want to get him, too” (R. 235-236). Wise replied that if signing a card would result in discharge, then all the employees “might as well” be discharged, because the camp was “organized 100 per cent” (*ibid.*). Robinson then threatened that he would “just shut the camp down” and lectured Wise about being a “sucker,” as he would realize “after J. L. Lewis got a couple of more millions.” Wise asked Robinson if he thought “it was fair and square to shut the camp down” when no demands had been made upon him (R. 237). Robinson rejoined that the demands would come later, and warned that he could not “operate with that kind of organization at all” (*ibid.*).

On June 6 a jammer broke down and Robinson laid off the entire crew, which consisted of 4 men who had been among the first to join the Union (R. 238, 397-400, 569-570). Fearing further reprisals, Wise arranged with Union Representative Johnson to hold a union meeting at the camp after work that day (R. 238). While Wise was visiting the bunkhouses notifying the men of the meeting, Robinson accosted Wise and another employee and warned: “Boys, I understand you are holding a meeting in this camp. There will be no God damned meeting held in this camp tonight, or any other time” (R. 239-240, 317). After further conversation, however, Robinson agreed to permit the employees to hold their meeting (R. 240-241, 181-182).

The Union meeting was held, as scheduled. The members formulated demands upon respondents, dis-

cussed grievances, and elected a committee to confer with Robinson (R. 242, 244). Immediately after the meeting, the committee met with Robinson (R. 179-180). Informing him that it was a C. I. O. committee and that the camp was "organized 100%" (R. 180), Johnson asked Robinson if he recognized the committee of the Union as representing the majority of the camp employees. Robinson replied: "Well, what else can I do? They are all there" (R. 242, 320).

The committee and Robinson then proceeded to discuss the employees' grievances (R. 242). Robinson agreed to reinstate the jammer crew that had been laid off earlier in the day as soon as the jammer was repaired (R. 185-186, 242-243, 322). He further agreed to the committee's proposal that in reopening the camp each season or in expanding operations preference be given to former employees, insofar as work which they could perform was available (R. 243-244, 321). Understandings were also reached with respect to a number of other matters concerning living conditions at the camp (R. 246).

Following the meeting with the committee, James Brown, Jr., Long Lake's assistant woods superintendent, arrived at camp and conferred with Robinson (R. 137-141, 184, 249); during the same evening Robinson received two long distance telephone calls from James Brown, Sr., president of Long Lake, at Spokane (R. 665-671). Immediately thereafter Robinson's attitude toward recognition of the status of the Union abruptly changed.

The following morning, June 7, 1939, Robinson, without advance notice, announced that operations were

closed down and directed the men to surrender their rigging and tools, to vacate their bunks, and to obtain their wages (R. 194, 350, 356). Pursuant to these directions the employees proceeded to leave the camp (R. 427).

After leaving the camp the employees met and called a strike in protest against respondents' lock-out (R. 250). When Wise informed Brown, Jr., Long Lake's assistant woods superintendent, of the Union action on the same day (*ibid.*), Brown attributed the closing of the camp to Long Lake's decision to assign Robinson to a smaller job in Montana, and explained that the Caribou Basin "job is too large for him; there is too much friction between Mr. Robinson and the camp" (R. 250-251). Brown further informed Wise, "Our mill [in Spokane] is organized, you could have got together here and formed a Union of your own and we would have helped you; * * * We get along fine with the men in the mill and never have any trouble and we could have got along the same here, but you fellows didn't realize the kind of organization you have joined; you could not have done worse; even the A. F. of L. would have been better than the thing you got into" (R. 253). After some further conversation Brown, Jr., remarked that during the past year he had investigated various labor organizations and had come to the conclusion that "we cannot operate with your kind of organization, and we will shut her down" (R. 253). When Employee Finley and his working partner turned in their rigging and tools and inquired "what was going on," they were told by either

Robinson or Brown, Jr., that the camp was shut down because of additional demands made by the Union that morning (R. 661, 688). Brown, Jr., added, significantly, "we have a union in Spokane. Our mills are organized by local fellows. If you fellows had an organization of that kind amongst yourselves, we would recognize that sort of a union" (*ibid.*). Later Robinson encountered Employee Frank Mor in a saloon at Sandpoint and said to him, "That is what you are down here for, because you signed up with the C. I. O." (R. 402), thus plainly inferring that he was in town and not at the camp at work because he was a member of the Union.

B. The Union's abortive efforts to bargain with respondents subsequent to the lock-out; the posting of pickets on the road leading to the camp; the resumption of operations

On June 15, while the lock-out was still in effect, the Union filed unfair labor practice charges against respondents with the Board (Bd. Exh. No. 1). On several occasions during the latter part of June, the Union met with respondents in the presence of a representative of the Board in an effort to arrange for the resumption of logging operations and the reinstatement of the employees (R. 203, 205). In order to dispel any doubts respondents may have had with respect to the Union's majority status, the union representatives repeatedly offered its membership application cards for a check against respondents' June 5 pay roll (R. 257-258). At one meeting Hunt, attorney for Robinson, began to check the cards against the pay roll. When, however, after questioning the authenticity of the signatures and suggesting that the

cards may have been signed under duress, he began to prepare a list of the names on the cards, the Union declined to permit him to continue the check (R. 211-212, 259, 282-283). Thereupon the Union proposed that the Board check the Union's membership cards as of a date preceding the lock-out, agreeing that if such an audit did not affirm the majority status of the Union, it would refrain from picketing or other forms of economic action (R. 205, 207-208, 260-261). Although the parties orally agreed to these proposals (*ibid.*), Robinson refused to reduce the agreement to a signed stipulation (R. 261). It was then suggested that the parties write letters to the Board's Regional Director incorporating these agreed provisions (R. 262). Letters were drafted but not exchanged; Robinson refused to abide by the results of a check of the Union's membership as against the June 5 pay roll, insisting instead that the check be made as of a date subsequent to the resumption of work (R. 458-459). This proposition was unacceptable to the Union (R. 262).

Subsequently the Union Committee met with Robinson in the absence of Attorney Hunt and Union Representative Johnson (R. 215). At this meeting Wise handed the union membership cards to Robinson and urged him to check them against the pay roll (R. 298, 590); Robinson refused, stating, "Boys, I have agreed to meet with you but I am not saying a word; I am not allowed to say anything. You talk all you want to and as long as you want to, and I will sit here and listen

to you. I am not saying a word; my hands are tied” (R. 267, 298, 684).

At the last meeting between the Union committee and Robinson, which Attorney Hunt and Union Representative Johnson also attended, the parties discussed the conduct of a consent election to be supervised by the Board. The Union contended that the election should be held as soon as possible; Robinson maintained that such an election take place after the reopening of the camp and the resumption of operations (R. 215). The meeting concluded with the understanding that the camp would be reopened on July 5, and that an election would take place on July 6 (R. 573). When the men, however, reported at the camp for work pursuant to this understanding, arrangements for the resumption of operations had not been made (R. 293–294). The election was not held and the Union, on the morning of July 6, posted a picket line on the road leading to the camp (R. 293).

On July 11, Robinson, together with Sheriff Rapp and other law enforcement officers, appeared at the entrance to the camp road with a group of men prepared to go to work. When the men, however, revealed their union affiliation and refused to go through the picket line (R. 411–412, 273), Sheriff Rapp suggested that they “try to get together with Frank [Robinson] and try to settle the thing?” (R. 274). Union Representative Johnson proposed an immediate check of union membership; Robinson rejected the proposal, reiterating that he would not recognize the

Union (R. 274-275, 685).³ He offered, however, to re-employ all the striking employees. Johnson refused the offer on the ground that the men would not return to work unless Robinson recognized the Union (R. 576).

On July 14, Robinson again appeared at the picket line with a newly recruited crew of men and in the presence of State police passed through the picket line. Shortly thereafter, the camp resumed operation (R. 577).

C. The illegality of respondents' conduct under the Act

1. *Respondents' violation of Section 8 (3) and (1) of the Act*

The foregoing findings amply warrant the Board's conclusion (R. 29, 31-32) that respondents shut down the camp and locked out the employees in order to discourage union membership and activities and to avoid their obligation to bargain collectively. Robinson's unconcealed hostility to the Union, as evidenced by his threats to discharge Wise and his associates in the Union and his threat to "shut the plant down"; Long Lake's manifest desire to eliminate the Union, as indicated by Assistant Woods Superintendent Brown's frank comments to Wise that he "could not have done any worse" than to join the Union, and his suggestions with respect to the formation of "a union of your own"; and the timing of the shut-down, immediately after the Union organizing activities appeared suc-

³ During this same period Robinson informed Fred Chaney, an employee, that he would not recognize the Union, that "he would kill the damned Union" (R. 420).

cessful and respondents were confronted with the necessity of dealing with the Union, all amply support the Board's conclusion that the lock-out of June 7, 1939, constituted an unfair labor practice.

Respondents' contention before the Board that the shut-down was necessitated by excessive precipitation, making it impossible to operate their trucks, finds no support in the record, as the Board concluded (R. 29). Although the precipitation in June of a previous year, 1937, greatly exceeded the rainfall in June 1939, and curtailed logging operations, nevertheless the camp was not closed during that season, as Bookkeeper Davis admitted; instead, the men remained in camp (R. 651-652, 581-584).⁴

Moreover this reason for the shut-down was advanced by respondents for the first time at the hear-

⁴ Moreover, the actual records as to rainfall in the vicinity of the Caribon Basin do not bear out respondents' claim that there had been excessive precipitation in June *prior* to the shut-down. While there was an excessive amount of rainfall in the month of June 1939, as a whole, the great bulk of this rain fell *after* the camp was closed. Thus, the records of the United States Department of Agriculture Forest Service Experiment Station at Priest River, approximately 12 miles from the camp, show that in the entire month of May and the first 6 days in June only .97 of an inch of rainfall was recorded while 2.81 of an inch was recorded in the remaining 24 days in June (R. 614-615, 622-623). The records of the nearby Idaho State Agricultural Station at Sandpoint show only .92 of an inch of precipitation for the entire month of May and the first 6 days in June, while during the rest of the month of June, following the shut-down, 2.52 inches of rain fell (R. 601-603). The average amount of rain falling in June at the Sandpoint Station is 1.59 inches (R. 604). It is thus evident that the decision to close the camp was reached upon the basis of much less than the average June rainfall.

ing. Assistant Woods Superintendent Brown in his lengthy conversation with Wise on the afternoon of the shut-down did not attribute the shut-down to excessive rainfall, but rather to Long Lake's difficulties with Robinson and the "friction" Robinson was having with the men (*supra*, p. 7). Similarly as noted at pp. 7-8, *supra*, statements that Robinson and Brown made to Employees Wise, Finley, and Mor subsequent to the shut-down referred to union activity as the motivating reason therefor rather than excessive precipitation, and thus fully confirm the conclusion that the shut-down was due to respondents' determination not to deal with the Union.

Under all the circumstances the Board's conclusion (R. 31-32) that "respondents shut down the camp on June 7 in order to prevent organizational activities among the employees and collective bargaining with the Union, and that by such action they discriminated in regard to the hire and tenure of employment of the employees * * * who were locked out of the camp because of the shut-down, thereby discouraging membership in the Union" in violation of Section 8 (3) and (1) of the Act is compelled by the record. *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652, 658; *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472, 475 (C. C. A. 3), enf'g 9 N. L. R. B., 219, 402-403; *Reliance Mfg. Co. v. N. L. R. B.*, 125 F. (2d) 311, 319 (C. C. A. 7), enf'g 28 N. L. R. B. 1051, 1173; *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681, 688-689 (C. C. A. 1); *N. L. R. B. v. Crystal Spring*

Finishing Co., 116 F. (2d) 669, 672 (C. C. A. 1); *N. L. R. B. v. Mall Tool Co.*, 119 F. (2d) 700, 701-702 (C. C. A. 7); *N. L. R. B. v. Hopwood Retinning Co.*, 98 F. (2d) 97, 100 (C. C. A. 2). The lockout, the Board found (R. 27, 44-45), continued in effect until July 11, 1940, when Robinson offered to reinstate the employees and respondents were prevented from re-opening the camp because of the strike and the picket line.⁵

2. Respondents' violations of Section 8 (5) and (1) of the Act

The Board further found (R. 34-35) that respondents' action on June 7, 1939, in shutting down the camp in order to avoid further bargaining with the Union "was tantamount to a refusal to bargain with the Union on that date" and that its action thereafter in persistently placing "every obstacle in the path of the Union's attempts to show a majority * * * was not the result of honest doubt as to the Union's designation as bargaining agent by a majority of the employees, but was motivated, on the contrary, by a desire to delay and prevent bargaining negotiations." Respondents' conduct on June 7 and thereafter, the Board concluded (R. 36-37, 48-49), constituted a refusal to bargain collectively in violation of Section 8 (5) and (1) of the

⁵ Taking cognizance of the fact that the employees refused Robinson's offer of reinstatement, the Board held (R. 44-47) that respondents' obligation to back pay because of the lock-out terminated as of July 11, 1939, and that the employees thereafter, as strikers, were entitled only to reinstatement upon their application.

Act. The propriety of this conclusion is not open to question.⁶

Respondents' entire course of conduct was consistent only with a complete rejection of the collective bargaining process. Not only did respondents seek by threats and other anti-union conduct to prevent the employees from organizing and bargaining through the Union (*supra*, pp. 4-5, 7-8), but on the morning immediately following the first request for collective bargaining, respondents took the unprecedented action of closing the camp and locking out all the employees. Such wholesale discrimination aimed to discourage the employees' adherence to the Union constituted just as unequivocal a rejection of the collective bargaining process as an outright and direct refusal to bargain collectively. The Board thus properly concluded that respondents' action in shutting down the camp on

⁶ The Board's determination (R. 32-33) that the employees at respondents' Caribou Basin camp, excluding supervisory officials, foremen, and clerical and office employees, constituted an appropriate collective bargaining unit is wholly reasonable. Respondents do not contest the appropriateness of the unit found by the Board.

The Board's finding (R. 33-34) that on June 6, 1939, and at all times thereafter, the Union represented a majority of the employees in the appropriate unit is amply supported by the evidence. There were 93 employees in the appropriate unit as of June 6, 1939, as shown by the June 5 pay roll and testimony as to changes occurring on June 6 (R. 374-382; see R. 33, n. (6) and Typewritten Transcript 1096-1097, 1100). Signed membership application cards introduced into evidence establish that 51 of the 93 employees in the appropriate unit had designated the Union as their "sole collective bargaining agent" on or before June 6, 1939, and that subsequently 15 additional employees similarly designated the Union as their bargaining agent (R. 390-400).

June 7, 1939, constituted a refusal to bargain on that date. *N. L. R. B. v. Crystal Spring Finishing Co.*, 116 F. (2d) 669, 672 (C. C. A. 1). Cf. *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552, 555 (C. C. A. 6); *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681, 686 (C. C. A. 1).

Respondents' conduct subsequent to the lock-out is equally inconsistent with the fulfillment of their obligations under Section 8 (5) of the Act. When requested to bargain collectively with the Union, respondents, if they honestly doubted the Union's majority status, had the duty to cooperate with the Union in its efforts to prove its right to represent the employees. *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 868-869 (C. C. A. 2), cert. denied 304 U. S. 576; *N. L. R. B. v. Dahlstrom Metallic Door Co.*, 112 F. (2d) 756, 757 (C. C. A. 2); *N. L. R. B. v. Somerset Shoe Co.*, 111 F. (2d) 681, 688 (C. C. A. 1); *Lebanon Steel Foundry v. N. L. R. B.*, 130 F. (2d) 404, 409 (C. A. D. C.), cert. denied 63 S. Ct. 58; *N. L. R. B. v. Piqua Munising Wood Products Co.*, 109 F. (2d) 552, 557 (C. C. A. 6); *N. L. R. B. v. New Era Die Co.*, 118 F. (2d) 500, 504 (C. C. A. 3); *N. L. R. B. v. Moltrup Steel Products Co.*, 121 F. (2d) 612, 618 (C. C. A. 3); *N. L. R. B. v. Texas Mining & Smelting Co.*, 117 F. (2d) 86, 88 (C. C. A. 5); *Solvay Process Co. v. N. L. R. B.* 117 F. (2d) 83, 86 (C. C. A. 5); *N. L. R. B. v. Schmidt Baking Co.*, 122 F. (2d) 162, 164 (C. C. A. 4); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 788 (C. C. A. 9), cert. denied 312 U. S. 678; *N. L. R. B. v. Bradford Dyeing*

Association, 310 U. S. 318, 339. The Board found (R. 35-36) that respondents were not interested in receiving such proof but rather in avoiding acceptance of the various methods proposed. Thus Hunt, attorney for Robinson, utilized the membership application cards proffered by the Union to prove its majority status, to prepare unnecessarily a list of union members (*supra*, pp. 8-9). Robinson flatly took the position that he could not check the union cards, that "[his] hands [were] tied" (*supra*, pp. 9-10). Also, as we have seen (*supra*, pp. 9-10), respondents persistently sought to have the Union establish its majority status as of a date subsequent to the lock-out, when the consequences of union affiliation had been forcefully brought home to them.⁷ And when Union Representative Johnson proposed a check of union membership on July 11, 1939, when Robinson attempted to take some men through the picket line, Robinson flatly refused to recognize the Union (*supra*, pp. 10-11). The Board was thus fully justified in finding (R. 36-37) that respondents' conduct subsequent to the shut-down also constituted a refusal to bargain

⁷ Respondents, as the Board found (R. 43), were obligated to bargain collectively with the Union upon the basis of its status prior to the lock-out. It is, of course, well settled that respondents, may not take advantage of any changes in the personnel of the bargaining unit brought about by the shut-down, since the shut-down was an unfair labor practice not only within the meaning of Section 8 (3) and (1) of the Act, but 8 (5) of the Act, as well. *N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318, 340; *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 82; *N. L. R. B. v. P. Lorillard Co.*, 314 U. S. 512, 513; cf. *N. L. R. B. v. Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 197-198.

collectively in violation of Section 8 (5) and (1) of the Act and that the strike was prolonged after July 11, 1939 because of respondents' refusal to recognize and bargain collectively with the Union.⁸

POINT II

Both Robinson and Long Lake are employers of the men here involved

As noted above (*supra*, p. 2), Long Lake's logging operations on the tract of land on which it has timber rights at Caribou Basin are carried on by Robinson. When Long Lake commenced logging on the Caribou tract, Robinson was engaged to build the road and the camp itself, the buildings becoming the property of Long Lake (R. 156-160, 163, 176). Since that time Robinson has conducted logging operations on this tract in accordance with an arrangement with Long Lake which is terminable upon 30 days' written notice, whereby Robinson maintains the camp and cuts and loads on cars for delivery to Long Lake various kinds of logs at specified prices, the quantity

⁸ Robinson's threats to "fire" Wise because of his union activities, his threats to "shut the camp down" if the Union organized it, his derogatory remarks concerning the Union and the national organization with which it is affiliated, his remarks openly attributing the shut-down to the activities of the Union, and Assistant Woods Superintendent Brown's frank comments that the men "could not have done any worse" than to join the Union, his statement that Long Lake could not "operate with your kind of organization," and his other remarks favorable to the formation of "a union of your own" and hostile to the Union, all disclosed a pattern of hostility constituting, as the Board found, interference, restraint, and coercion and an independent violation of Section 8 (1) of the Act (R. 37-38).

and time of delivery being determined by Long Lake (R. 123, 130-132, 147-156, 503, 504).⁹ While nominally Robinson is the employer of the men working at the camp, in actual practice Long Lake furnishes the funds not only to meet the pay roll but to meet other operating expenses as well. Thus, each month Robinson sends the pay roll to Long Lake and receives funds to meet it (R. 164); Robinson also requisitions funds to meet other expenses (R. 578-579, 646-647, 169-170).¹⁰ Thus, Long Lake exercises a considerable degree of control over Robinson's operations. Not only is the agreement with Robinson terminable upon 30 days' notice, but Long Lake does not bind itself to take any specified quantity of logs, reserving to itself the right not only to determine the quantity of logs acceptable but also the time of delivery as well. And in actual practice the maintenance of operations at the camp depends entirely upon the continued furnishing of funds by Long Lake. The arrangement plainly leaves Robinson little room for independent action.

Moreover, Long Lake exercises general supervision over the operations performed in the camp. Long Lake's assistant woods superintendent, James M. Brown, Jr., according to his own admission, spends half of his time at the camp checking whether the

⁹ A letter from Long Lake to Robinson dated January 26, 1939, indicating the rates to be paid by Long Lake for the various types of logs during the 1939 season, serves as a memorial of the agreement in effect in 1939 (R. 502-504).

¹⁰ In 1939, as a result of operating on this basis for preceding years Robinson, according to Long Lake's records, had become indebted to Long Lake in the sum of \$24,924.06 (R. 503).

men "fall" the timber properly and supervising compliance with the brush disposal regulations and fire laws (R. 120, 124-125, 128-130, 133-135, 149-152). Admittedly, if he observes infractions of the law or Company regulations, he makes appropriate complaints to the straw boss on the scene and reports it to Long Lake at Spokane (R. 124-125, 128). Brown also advises Robinson with respect to the section to be cut and checks to determine whether Robinson is conducting the logging operations in accordance with the provisions of Long Lake's contract with the Humbird Lumber Company, the owner of the Caribou Basin tract (R. 154-155, 158-159). Long Lake's Woods Superintendent Breen from time to time visits the camp and assists direction of the work. In August 1939, Breen assisted in the construction of a dam at the camp and directed the men in Robinson's absence (R. 217-219).

The Board found (R. 39-40), that "in addition to exercising general supervision over the work of employees engaged in the logging operations, Long Lake also controlled, to a large extent, Robinson's relations and dealings with said employees" and actually "participated" in the unfair labor practices here involved. On June 6, 1940 when Robinson conferred with the committee, alone, he not only conceded the Union's right to exclusive recognition but he came to an agreement with the Union concerning the settlement of certain outstanding grievances, and the prospect of harmonious relations between Robinson and

the Union appeared promising. However, after the arrival of Brown, Jr., upon the scene and after the receipt of two telephone calls from Brown, Sr., Long Lake's president (*supra*, p. 6), Robinson abruptly closed down the camp and locked out the employees. Upon these facts the Board was plainly justified in finding, as it did (R. 41), that "both Robinson's decision to shut down the camp and his persistent refusal thereafter to recognize the Union * * * were the result of instructions received from Long Lake." Long Lake's participation in Robinson's decision to shut down the camp and his change in attitude toward collective bargaining with the Union thereafter, are also evidenced, as the Board pointed out (R. 40-41), by Brown's statement to Employee Finley to the effect that if the employees had an organization of "local fellows * * * we would recognize that sort of a union" (*supra*, pp. 7-8), and his announcement to Wise, the mainspring of the Union, that Long Lake could not operate "with [his] kind of organization, and we will shut her down" (*supra*, p. 7). Robinson's frank admission at one of the conferences with the Union committee that he had agreed to meet with the committee but that he was "not allowed to say anything," that his hands were tied (*supra*, pp. 9-10), strikingly reveals the extent to which Long Lake controlled Robinson's relations with the Union.

Under all the circumstances, the Board's conclusion that Long Lake participated in the unfair labor prac-

tices herein involved and was and is an employer of the employees at Caribou Basin, within the meaning of Section 2 (2) of the Act was clearly permissible. Precisely in point is the decision of this Court in *N. L. R. B. v. Grower-Shipper Vegetable Association*, 122 F. (2d) 368, 377-378, directing a group of grower-shippers who had participated in a scheme of discrimination against 10 employees to reinstate them with back pay, notwithstanding the objection of some of the grower-shippers that they had never been employers of the employees in question.

Similarly in *N. L. R. B. v. Condenser Corp.*, 128 F. (2d) 67 (C. C. A. 3), the Court sustained an order against two affiliated corporations, one, Cornell, a purchasing and sales corporation, and the other, Condenser, a manufacturing corporation, despite the objection that the Cornell corporation was not the employer of the employees in question. In holding that the order redressing unfair labor practices against Condenser's employees was properly directed to both corporations the Court stated (at p. 71), in language strikingly apposite here:

This is in no sense a penalty against the parties for an arrangement which is deemed by them to be in the interests of efficiency. It simply rests on the premise that where in fact the production and distribution of merchandise is one enterprise, that enterprise, as a whole, is responsible for compliance with the Labor Relations Act regardless of the corporate arrangements of the parties among themselves.

What is important for our purpose is the degree of control over the labor relations in issue exercised by the Company charged as a respondent. *Press Co., Inc. v. N. L. R. B.*, 118 F. (2d) 937 (C. A. D. C. 1940). Regardless of what Cornell says concerning its connection with Condenser's employees it appears that "together, respondents act as employers of those employees * * * and together actively deal with labor relations of those employees." *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 263 (1938). Evidence of this is abundant * * * it will suffice at this time to point out that Cornell's officers were very active in dominating the original local union, Independent, and again, in bringing negotiations with that group's successor, Brotherhood, to a culmination. It is noteworthy, too, that the reinstatement of some of the men first discharged was arranged with Cornell's president, Mr. Blake. This and similar evidence is controlling in our disposition of the question of Cornell's status as an employer. As has been said, "* * * the problem is not to be approached from the standpoint of vicarious liability." *Consolidated Edison Co. of New York, Inc. v. N. L. R. B.*, 95 F. (2d) 390, 394 (C. C. A. 2, 1938, modified on another point, and affirmed 305 U. S. 197 (1938). *It is rather a matter of determining which of two, or whether both, respondents control, in the capacity of employer, the labor relations of a given group of workers.* [Italics supplied.]

In *Butler Brothers v. N. L. R. B.*, decided March 31, 1943, 12 L. R. R. 287 (C. C. A. 7), Butler Brothers had contracted with one Wasleff, an individual engaged in the building maintenance business, to have him handle, on a contractual basis, the building maintenance work formerly performed by Butler Brothers itself. The Board found that notwithstanding this arrangement, Butler Brothers retained ultimate control over these maintenance employees who were nominally in the employ of Wasleff and that Butler Brothers, therefore, assumed jointly the role of employer of such employees within the meaning of Section 2 (2) of the Act. The Board, finding that the rights of these maintenance employees under the Act had been interfered with and that nine of them had been discriminated against because of their union membership and activities, directed its order against both Wasleff and Butler Brothers. The Court, upon the basis of "the amount of control" exercised by Butler Brothers over the employees of Wasleff, rejected Butler Brothers' contention that Wasleff, an independent contractor, was the sole employer of the employees in question and held that the Board could properly direct its order against, and require compliance of, both Butler Brothers and Wasleff, irrespective of the precise technical nature of the relationship between the two parties.

In view of the foregoing decisions there can be no doubt as to the propriety of the Board's action in holding Long Lake jointly with Robinson as the employer

of the men at the Caribou Basin camp and in entering an order against both.¹¹

POINT III

The Board's order is valid and proper under the Act

Paragraphs 1 (a) and (b) of the Board's order (R. 50) directing respondents to cease and desist from their unfair labor practices are mandatory under Section 10 (e) of the Act. *N. L. R. B. v. Pennsylvania Greyhound Lines*, 303 U. S. 261, 265. In view of respondents' independent violations of Section 8 (1) of the Act, as well as the discriminatory lock-out of all their employees and the refusal to bargain collectively with the Union, paragraph 1 (c) of the Board's order (R. 50) requiring respondents to cease and desist from "in any other manner interfering with, restraining, or coercing their employees" is plainly a proper safeguard against the "threat of continuing and varying efforts to attain the same end in the future" which is implicit in respondents' varied misconduct in the past. *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, 438; *N. L. R. B. v. Hollywood-Maxwell Co.*, 126 F. (2d) 815, 819 (C. C. A. 9); *N. L. R.*

¹¹ See also the following cases in which Board orders against affiliated corporations have been sustained over the objection of one of the affiliates that it was not an employer of the employees in question: *Bethlehem Steel Co. v. N. L. R. B.*, 120 F. (2d) 641, 648-650 (C. A. D. C.); *N. L. R. B. v. Swift & Co.*, 127 F. (2d) 30, 43 (C. C. A. 6); *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587, 589-590, 594-595 (C. C. A. 3); *N. L. R. B. v. Gerity Whitaker Co.*, 10 L. R. R. 494 (C. C. A. 6), cert. denied 63 S. Ct. 663, enforcing 33 N. L. R. B. 393, 425. Cf. *N. L. R. B. v. Adel Clay Products Co.*, 134 F. (2d) 342 (C. C. A. 8).

B. v. Pacific Gas and Electric Co., 118 F. (2d) 780, 789 (C. C. A. 9); cf. *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652, 660 (C. C. A. 9).

Paragraph 2 (a) of the Board's order (R. 51) directing respondents upon request to bargain collectively with the Union, the usual order entered upon findings of a refusal to bargain, is of established validity.

Paragraph 2 (b) of the Board's order (R. 51) provides for the reinstatement with back pay of the employees who were locked out and who thereafter declared a strike in protest against respondents' unfair labor practices. The Board in paragraph 2 (b) of its order inadvertently directed that respondents offer reinstatement to the unfair labor practice strikers, with back pay from 5 days after the date of the Board's order. To correct this inadvertent error and to relieve respondents of the more onerous requirements of paragraph 2 (b) as written, it is respectfully requested that paragraph 2 (b) be modified to require respondents to offer reinstatement to the striking employees only upon their application and to pay back pay only from 5 days of any refusal of reinstatement or placement upon a preferential list.¹² Paragraph 2

¹² Paragraph 2 (b) of the Board's order would then read:

"(b) Upon application offer to the employees listed in Appendix A immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled 'The remedy' above, placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section; and make whole said employees for any loss of pay they may suffer by reason of

(b), as so modified, is the normal remedial provision entered in cases where strikes are caused or prolonged by unfair labor practices. The propriety of such provisions has been uniformly sustained by the Courts. *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676 (C. C. A. 9); *N. L. R. B. v. Grower-Shipper Vegetable Association*, 122 F. (2d) 368, 378 (C. C. A. 9); *N. L. R. B. v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9), cert. denied 304 U. S. 575; *N. L. R. B. v. Biles-Coleman Lumber Co.*, 98 F. (2d) 18 (C. C. A. 9); *Republic Steel Corp. v. N. L. R. B.*, 107 F. (2d) 472, 478 (C. C. A. 3), cert. denied on this point 309 U. S. 684.

The validity of paragraph 2 (c) of the Board's order (R. 51-52) directing respondents to reimburse the employees whom it discriminatorily locked out of the Caribou Basin camp for the sums they would have earned from June 7, 1939, the date of the lock-out, to July 11, 1939, when they declined respondents' offer of reinstatement, is not open to question. Section 10 (c) of the Act specifically includes back pay as an "illustration" of one form of remedial action available to the Board upon findings of unfair labor practices. *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 189. Of equally settled validity is paragraph 2 (d) of the Board's order (R. 52), requiring respondents to post appropriate notices.

any refusal of reinstatement or placement upon the preferential list, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from five (5) days after the date upon which he applied for reinstatement to the date of the offer of reinstatement or placement upon the preferential list, less his net earnings during said period."

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that the order directed against both Robinson and Long Lake, modified as requested herein, is wholly valid, and that a decree should issue affirming and enforcing said order.

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MAY 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V., Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(2) The term “employer” includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home or any individual employed by his parent or spouse.

* * * * *

(9) The term “labor dispute” includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to ar-

range terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit ap-

propriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof

* * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power * * * to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so

modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

No. 10368

In the United States Circuit Court of
Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

v.

LONG LAKE LUMBER COMPANY, and
F. D. ROBINSON, RESPONDENTS.

On Petition for Enforcement of an Order of the
National Labor Relations Board

BRIEF FOR RESPONDENT, LONG LAKE
LUMBER COMPANY

FILED

JUN 29 1943

PAUL P. O'BRIEN,
CLERK

C. H. POTTS,
Attorney for Respondent
Long Lake Lumber Company.

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**NATIONAL LABOR RELATIONS BOARD,
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**On Petition for Enforcement of an Order of the
National Labor Relations Board**

**BRIEF FOR RESPONDENT, LONG LAKE
LUMBER COMPANY**

JURISDICTION

Respondent, Long Lake Lumber Company, does not question the jurisdiction of this Court. The allegation in the petition for enforcement that "This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act" (R. 88), is admitted by this Respondent in its answer to the petition by failure to deny said allegation. (R. 96).

STATEMENT OF THE CASE

QUESTION INVOLVED: IS LONG LAKE LUMBER COMPANY AN "EMPLOYER"?

The facts relating to this question are as follows:

Respondent, Long Lake Lumber Company, (hereinafter called Long Lake), purchased the standing timber being logged by Respondent, F. D. Robinson in the Caribou Basin Logging Operation involved in this proceeding, from the Humbird Lumber Company under a written contract dated June 28th, 1935. (Respondents' Ex. No. 2.) (R. 469-480). This contract required Long Lake to cut the timber "in accordance with the rules and regulations of the U. S. Forestry Service in force on contracts governing the sale of U. S. Forestry timber at the present time." (R. 474) It contained a provision for termination in case of default by Long Lake in the performance of any of its terms and conditions in the manner therein specified. (R. 479)

Respondent, Robinson, was conducting the logging operations in 1939 under a contract in writing between Long Lake and himself dated January 26, 1939. (R. 501, 554) This contract, Respondents Ex. No. 4, (R. 502-504), provided that all work must be done to conform with the contract with Humbird Lumber Company for the purchase of the timber. (R. 504) Long Lake agreed to pay Robinson certain specified prices per M for logging. (R. 503). Robin-

son did the logging, handling the logs from the stump to the car. (R.513-514, 554). He employed the men, and fixed their wages, salaries or compensation. (R. 122, 516) Long Lake did not direct Robinson as to whom he should employ, or as to when or how long he should employ them, or whether or not they should be discharged. (R.122, 516) Long Lake, or its officers, did not know the individuals whom Robinson employed. (R. 516) Robinson maintained a cook-house for providing meals for the employees, and conducted it, employing and paying the cook and bull-cook. (R. 516) He also maintained a blacksmith shop, and employed the blacksmith and paid his wages. (R. 517) Robinson owned all equipment used in the logging operations. (R.632) Long Lake had no logging equipment on the operation, (R. 169) and did not own any logging equipment any place. (R. 518) Robinson paid the Unemployment Compensation, Industrial Accident Insurance and Social Security Taxes for his men, (R. 175, 554) and had a hospital contract for the men in case of illness or injury. (R. 554)

Respondent, Robinson, was customarily engaged in the business of a logging contractor, (R. 528) and had been so engaged for more than 20 years. (R. 528) He used some of his equipment for other things than logging, and on other jobs. (R. 550-551) In 1939, he constructed a dam at Colburn for Long Lake under a separate contract. Respondents Ex. No. 5.

(R. 507-509)

Not only Long Lake, but Humbird Lumber Company as well, actively supervised the logging of the timber, to see that it was cut according to the contract. (R. 521-524) Employees of Humbird Lumber Company made the scale at the landings on which payment for the stumpage as well as payment for the logging was made. The three parties in interest accepted that scale as the basis for settlement on their respective contracts. (R. 521) Humbird Lumber Company had other employees working in the woods in connection with the logging operation, who checked to see that the timber was cut and handled according to the contract, and that the job was done in a workmanlike manner, including the disposal of the slash which Long Lake was required to take care of under the contract. (R. 522-523)

Most of this work in 1939 was done for Long Lake by James Brown, Jr., whose instructions from James M. Brown, Sr., president of Long Lake, were "to watch the job continuously and most rigidly to see that Mr. Robinson would conform with the Humbird contract". He did not instruct James Brown, Jr., or any other employee of Long Lake to direct Robinson in the conduct of his logging operations, but at all times "advised them that it was Mr. Robinson's job and not ours". (R. 524) No employee of Long Lake had authority to direct Robinson in the conduct of his logging operations. (R. 524) James M. Brown,

Sr., did not at any time direct Robinson in the conduct of his logging operations. (R. 525) James Brown, Jr., was at Caribou Basin in 1939, as assistant woods superintendent of Long Lake (R. 123) to see that Robinson's operations were conforming to the Humbird contract. (R. 151) He did not direct the men in their work. (R. 132) His father (James M. Brown, Sr.) had told him not to interfere with the work, and he had followed those instructions. (R. 131) He measured the stumps and checked up on percentages (R. 165), but did not direct any of the workmen or direct Robinson as to the rate and progress of cutting, except according to the Humbird contract. (R. 166) Robinson and Davis (Robinson's bookkeeper, (R. 676) signed the checks to the employees of the Caribou camp in 1939. (R. 172)

Robinson did not contact, or talk to, James M. Brown, Sr., or anyone, on that subject, after first learning that the Caribou Camp was being organized. (R. 223)

The Board's witness, Leon M. Wise, testified that Robinson said he would "shut the camp down" on the morning of June 5th, (R. 234-236), the day before the record of the telephone calls to Robinson, at Sandpoint, Idaho, from J. M. Brown's telephone number in Spokane, Washington, on the evening of June 6th. (R. 666-671)

SUMMARY OF ARGUMENT

I. The finding of the Board that Long Lake was

and is an employer of the employees at Caribou Basin engaged in logging operations within the meaning of Section 2 (2) of the Act (R. 41) is not supported by substantial evidence.

II. The finding of the Board that Long Lake participated in the unfair labor practices found to have been committed by Robinson, and thus discriminated in regard to the hire and tenure of employment of the employees, etc. (R. 42-43) is not supported by substantial evidence.

III. The Board's order requiring Respondent, Long Lake, to cease and desist from the matters and things therein specified, and to take the affirmative action therein set forth (R. 49-53) is invalid and improper under the Act, and is unnecessary to insure the effectiveness of the order with respect to Respondent, Robinson.

ARGUMENT

POINT I.

LONG LAKE IS NOT AN EMPLOYER OF THE EMPLOYEES AT CARIBOU BASIN WITHIN THE MEANING OF SECTION 2 (2) OF THE ACT.

The legal relationship between Long Lake and Robinson is evidenced by the contract of January 26, 1939, Respondents Ex. No. 4, (R. 502-504), in which Long Lake agreed to pay him certain specified prices per M for logging, and in which it was pro-

vided that all work must be done to conform with the contract with Humbird Lumber Company for the purchase of the timber. (R. 503-504) The Humbird contract, Respondents Ex. No. 2, (R. 469-480) required Long Lake to cut the timber in accordance with the rules and regulations of the Forestry Service (R. 474), and to pay for it on a stumpage basis. (R. 478)

Since the provisions of the Humbird contract covered all requirements governing the logging of the timber, it was not necessary to repeat them in the logging contract. Long Lake was obligated to conform to the provisions in the Humbird contract, and in contracting with Robinson to log the timber it was essential for its protection that he be required to comply with those provisions. In consequence, Long Lake had to exercise such supervision over the logging of the timber as would insure Robinson's performance of its obligations to the Humbird Lumber Company.

Long Lake did not retain any right of control or direction over the details of the logging operation by the terms of the contract, or otherwise. Robinson agreed to produce certain results, viz., to log the timber according to the requirements of the Humbird contract, and to deliver the logs. When these results were accomplished, he had fully performed his obligations to Long Lake under his contract.

In the performance of his contract with Long

Lake, Robinson had full and complete control of his logging operations. He had the right to determine the mode and manner in which he would perform the work under the contract. Long Lake had no right to tell Robinson how many men he should employ, the wages they should receive, or the time they should be permitted to work. The evidence is undisputed that he did hire and fire his own employees, fix their salaries and wages, and discharge them when he saw fit. (R. 122, 516) He maintained his logging camp at his own expense, directed his employees what to do, furnished all equipment for the logging operations, (R. 632) kept his own books, paid all taxes and contributions for workmen's compensation, social security, hospital contracts (R. 175, 554), and in every way did what any man usually does when he is running his own business.

The record contains no evidence that Long Lake, through any of its officers or representatives, or otherwise, claimed or asserted the right to direct Robinson, or interfere with his freedom of action, in handling all the details of his logging operations. On the contrary, the record shows that he was in full charge and had complete control of the operations from the time the trees were felled until the logs were delivered to Long Lake. (R. 513-514, 554)

Robinson had been engaged in the business of a logging contractor for a long period of time, (R. 528) and had contracted with lumber companies other

than Long Lake. (R. 550-551) In addition, he contracted with others for the performance of work in which he used his equipment when the logging operations were closed down. (R. 550-551) He was customarily engaged in the independently established business of a logging contractor. (R. 528)

During the course of his logging operations for Long Lake, Robinson entered into a separate and distinct contract for the construction of the dam at Colburn Creek. (R. 507-509) The arrangement for this work was covered by a contract in writing bearing date of August 18, 1939, the year involved in this proceeding. Respondents Ex. No. 5. (R. 508-509) Under the terms of this contract he was to furnish all the labor and all the material for the construction of the dam, skidways, etc., in accordance with the plan which had been outlined, and was to be reimbursed for all money expended, and paid ten per cent for his services. He was also to receive a reasonable rental charge for his equipment used on the job.

The freedom from control which determines the existence of the relationship of independent contractor is not an absolute and complete freedom from control. It is freedom from control as to the details of the work. As stated by the Washington Court in the case of *Washington Recorder Publishing Co., v. Ernst*, 91 Pac. (2d) (Wash.) 718, 124 A.L.R. 667, "The Courts have never held that, in the determination of the relationship of independent contractor,

there must be an absolute and complete freedom from control.”

Applying this test to the relationship between Long Lake and Robinson, as disclosed by the record, there can be no question that Robinson was an independent contractor, and was the sole employer of the men employed in his logging operations. He had full and complete control of the details of the work and the mode and manner of performing it. Long Lake was interested only in the results of the work, viz., having the timber logged in accordance with its obligations under the Humbird contract, and in the delivery of the logs. Any supervision exercised by Long Lake was confined to the protection of its own interests, and did not extend to the control of the details of the work. Long Lake had the right to give advice and render assistance to Robinson. It was to its interest that his operations should be successfully conducted.

The record discloses that the legal relationship of Respondent, Robinson, to Long Lake was that of an independent contractor under the common law test governing the relationship, the test adopted by the Supreme Court of Idaho, the place of performance, and the test adopted by the Supreme Court of Washington, the place where the contract was apparently made.

THE COMMON LAW TEST. The principal elements to be considered in determining whether the

relationship is that of employee or independent contractor under the common law are set forth in the Restatement of the Law of Agency, Volume 1, Section 220, at pages 483-485, and the statement therein contained is supported by the decisions of the courts of last resort in practically all the jurisdictions in this country, as shown by the following citations:

- 19 A.L.R., pages 226 to 276;
 James v. Tobin-Sutton Co., 195 N. W. (Wis.) 848;
 Indiana Iron Co. v. Cray, 48 N. E. (Ind.) 803;
 Prest-O-Lite Co. v. Skeel, 106 N. E. (Ind.) 365;
 Alexander v. R. A. Sherman's Sons Co., 85 Atl. (Conn.) 515;
 Nichols v. Hubbell, 103 Atl. (Conn.) 835, 19 A. L. R. 221;
 Linquist v. Hodges, 94 N. E. (Ill.) 94;
 Ballard & B. Co., v. Lee, 115 S.W. (Ky.) 732;
 Messmer v. Bell, etc. Co., 117 S.W. (Ky.) 346;
 Carrico v. West Virginia, etc. Co., 19 S. E. (W. Va.) 571;
 Gall v. Detroit Journal Co. 158 N. W. (Mich.) 36, 19 A.L.R. 1164;
 Laffery v. United States Gypsum Co., 111 Pac. (Kans.) 498;
 Peters v. St. Louis & S.F.R. Co., 131 S. W. (Mo.) 917;
 Crossett Lumber Co. v. McCain. —S. W. (2d) (Ark.) —;
 Williams v. United States, 126 Fed. (2d), 129, (C. C. A. 7)

THE IDAHO TEST. The following is the definition of an independent contractor adopted by the Supreme Court of Idaho:

“An independent contractor is one who, in rendering services, exercises an independent employment or occupation, and represents his employer only as to the results of his work and not as to the means whereby it is to be accomplished The chief consideration which determines one to be an independent contractor is the fact that the employer has no right of control as to the mode of doing the work contracted for.”

Joslin v. Idaho Times Publishing Co., 56 Ida. 242-253, 53 Pac. (2d) 323.

In the opinion in the last cited case, the Supreme Court of Idaho stated:

“The right to control must not be merely as to the accomplishment of the work, but it must be as to the mode and means of performance.”

Joslin v. Idaho Times Publishing Co., *supra*, page 253.

THE WASHINGTON TEST.

In one of the latest decisions of the Supreme Court of Washington in which the relation of independent contractor was involved, the Court held that the provisions of the Unemployment Compensation Statute, which manifestly were intended to limit the application of the common law rule, did not change the relationship, and adhered to the common law test of independent contractors as stated in former decisions of that Court. In the opinion the Court stated that the extension of the term “employment” to include independent contractors and others not within the employer-employee relationship, which

was urged, invites a challenge to the constitutionality of the Act, as the tax enacted of the employer would be a tax upon the naked right to contract.

Washington Recorder Publishing Co., v. Ernst, 91 Pac. (2d) (Wash.) 718, 124 A.L.R. 667.

After considering the common law test, as set forth in the Restatement of the Law of Agency, the Court quoted with approval from many of its former decisions in the following cases:

Leech v. Sultan R. & Timber Co., 297 Pac. (Wash.) 203, 205.

Amann v. Tacoma, 16 Pac. (2d) (Wash.) 601, 607.

Carlson v. Collier & Son Corporation, 67 Pac. (2d) (Wash.) 842-849.

Sills v. Sorenson, 73 Pac. (2d) (Wash.) 798, 801.

Larson v. American Bridge Co. 82 Pac. (Wash.) 294.

The provision for cancellation on thirty days' notice by either party is not determinative of the question.

In Gall v. Detroit Journal Co., *supra*, the contract contained the provision that, "This agreement may be terminated by either party at any time without notice."

In Washington Recorder Publishing Co. v. Ernst, *supra*, the cancellation provision read: "It is understood and agreed that this agreement may be cancelled at any time, at the discretion of The Daily Olympian."

In *Crossett Lumber Co. v. McCain, supra*, the written contract between the parties permitted cancellation by either on three days' notice.

The intent to nullify such a long established legal principle can not be attributed to the Congress by reason of the inclusion in the definition of an "employer" in Sec. 2 (2) of the Act, the clause reading: "any person acting in the interest of an employer, directly or indirectly", in the absence of convincing evidence that such was the purpose of this clause. There is no such evidence, either in the Congressional Debates, or the Reports of the Committees. It is not entirely clear what Congress meant by this provision, but a reasonable interpretation is that its purpose was to reach persons acting for and on behalf of an employer, such as a superintendent, foreman or agent. If such persons committed unfair labor practices in violation of the Act in the interest of the employer they could be treated as employers for the purposes of enforcement. It is an unreasonable interpretation to include within the definition every person who is in a position to exert some influence on the employer through financial control, or otherwise. Such an interpretation could make the employer's banker or lawyer an "employer" for the purposes of the Act.

None of the cases cited in the Board's Brief support such an interpretation. The decisions are grounded on the "amount of control" exercised over

the employees. Thus, in the case on which the Board places great reliance, *Butler Brothers v. N.L.R.B.* (C.C.A. 7), 12 L.R.R. 287, the Court held the owner of the building an "employer" within the Act because of the amount of control retained by the owner under the contract by which the independent contractor "ostensibly became the employer of the maintenance employees involved in this controversy." The Board had found that "in actual practice under the contract" the owner continued to direct much of the work of the maintenance employees, to exercise a controlling voice in decisions as to their hire and tenure of employment, and to formulate labor relations policy." The Court held that this finding had factual support, and that there was a reasonable inference that the owner's motive, in part at least, in executing the contract was to escape certain demands made upon it by the Union. In the opinion, the Court distinguished the case of *Williams v. United States*, *supra*, in which the same Court had held that the performer of the services was an independent contractor, on the ground that the "amount of control retained by petitioner, as disclosed by the contract, and especially by its subsequent conduct toward the employees" made the cases distinguishable in at least one important aspect. The decision in the *Williams* case was not modified or weakened by the opinion in the *Butler Brothers* case.

POINT II.

LONG LAKE DID NOT PARTICIPATE IN THE
UNFAIR LABOR PRACTICES FOUND TO
HAVE BEEN COMMITTED BY ROBINSON.

The finding "that Long Lake participated in and directed the decision to shut down the camp" (R.40) finds no support in the record. It is based on suspicion and conjecture, and not on evidence.

The proof offered was a record of telephone calls to Robinson, at Sandpoint, Idaho, from J. M. Brown's telephone number in Spokane, Washington, on the evening of June 6th. (R. 666-671) There was no evidence as to the identity of the person making the calls, or the subject of the conversations. The calls were made a day and a half after Robinson had threatened to "shut the camp down" according to the testimony of the Board's star witness, Leon M. Wise. (R. 234-236) This statement was made in the morning of June 5th, before James Brown, Jr. arrived at the camp in the evening. (R. 234) This shows that Robinson acted on his own initiative, and reached his decision before he could have received any advice from Long Lake, or its officers, at the times relied upon as the grounds of suspicion. No witness testified that any officer or representative of Long Lake directed Robinson to close the camp, and both Brown, Sr. and Robinson denied it. (R.225, 226-227)

Long Lake was never asked to bargain with the

Union, and the finding that it refused to bargain is not supported by any evidence. There is nothing in the record to indicate that Long Lake, or any of its officers, had anything to do with the negotiations between Robinson and the Union representatives. Robinson and his attorney conducted all negotiations.

POINT III.

THE BOARD'S ORDER AGAINST LONG LAKE IS INVALID AND IMPROPER, AND IS UNNECESSARY.

Since Long Lake is not an employer of the men involved the Board had no jurisdiction to include it in the order. The Board can proceed only against an "employer" under the Act. Long Lake is not in a position to comply with the order. It can not reinstate any of Robinson's employees. The employer-employee relationship does not exist between Long Lake and Robinson's employees. He hired them, and none of Long Lake's officers even know the individuals employed on the job. (R. 516) Long Lake does not have the power to negotiate a contract for Robinson. The order directs Long Lake to take action which it does not have the power to take.

Furthermore, the record does not indicate that it is necessary that the order include Long Lake to insure its effectiveness as to Robinson.

CONCLUSION.

It is respectfully submitted that the order of the Board should be set aside, and enforcement thereof denied, as to Respondent, Long Lake Lumber Company.

C. H. POTTS

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